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Clerk, U.S. District Court
Northern District of California
San Jose

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 2 KATHERINE M. DRU (State Bar No. 280231)
 3 **HOOPER, LUNDY & BOOKMAN, P.C.**
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 Los Angeles, California 90067-2517
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5 Attorneys for Plaintiffs BAY AREA
 6 SURGICAL GROUP, INC.; KNOWLES
 7 SURGERY CENTER, LLC, NATIONAL
 8 AMBULATORY SURGERY CENTER,
 9 LLC, LOS ALTOS SURGERY CENTER,
 LP, FOREST SURGERY CENTER, LP and
 SOAR SURGERY CENTER, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

13 BAY AREA SURGICAL GROUP,
 14 INC.; KNOWLES SURGERY
 15 CENTER, LLC; NATIONAL
 16 AMBULATORY SURGERY CENTER,
 17 LLC; LOS ALTOS SURGERY
 18 CENTER, LP; FOREST AMBULATORY
 19 SURGICAL ASSOCIATES, LP; SOAR
 20 SURGERY CENTER, LLC,

Plaintiffs,

vs.

21 AETNA LIFE INSURANCE
 22 COMPANY; LOCKHEED MARTIN
 23 CORPORATION, a Maryland
 24 corporation; LOCKHEED MARTIN
 25 HEALTHWORKS PLAN; LOCKHEED
 26 MARTIN CORPORATION FLEXIBLE
 27 BENEFITS PLAN; ADOBE SYSTEMS
 28 INCORPORATED, a Delaware
 corporation; ADOBE SYSTEMS
 INCORPORATED GROUP WELFARE
 PLAN; COSTCO WHOLESALE
 CORPORATION, a Washington
 corporation; COSTCO WHOLESALE
 CORPORATION EMPLOYEE
 BENEFITS PLAN PROGRAM;
 APPLIED MATERIALS, INC., a
 Delaware corporation; APPLIED
 MATERIALS, INC., WELFARE PLAN;

CASE NO.

COMPLAINT

1. RECOVERY OF BENEFITS
UNDER 29 U.S.C. § 1132(a)(1)(B)
2. BREACH OF FIDUCIARY DUTY
UNDER 29 U.S.C. § 1132(a)(2)
3. PRODUCTION OF
DOCUMENTS AND PENALTIES
UNDER 29 U.S.C. §§ 1024(b),
1133(2), and 1132(c)(1)
4. UNFAIR BUSINESS ACTS AND
PRACTICES § 17200

Trial Date:

None Set

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COPY

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1 BROADCOM CORPORATION, a
 2 California corporation; BROADCOM
 3 CORPORATION WELFARE PLAN;
 4 VMWARE, INC., a Delaware
 5 corporation; VMWARE, INC.
 6 FLEXIBLE SPENDING ACCOUNT
 7 PLAN; VMWARE GROUP HEALTH
 8 PLAN; YAHOO! INC., a Delaware
 9 corporation; YAHOO INC. HEALTH
 10 AND WELFARE PLAN; XILINX,
 11 INC., a Delaware corporation;
 12 XILINX INC. HEALTH AND
 13 WELFARE PLAN; BECTON
 14 DICKINSON AND COMPANY, a New
 15 Jersey corporation; SAP AMERICA,
 16 INC., a Delaware corporation; SAP
 17 AMERICA HEALTH & WELFARE
 18 PLAN; NATIONAL
 19 SEMICONDUCTOR CORPORATION,
 20 a Delaware corporation; NATIONAL
 21 SEMICONDUCTOR CORPORATION
 22 FLEXIBLE LIFE INSURANCE PLAN;
 23 NATIONAL SEMICONDUCTOR
 24 CORPORATION COMPREHENSIVE
 25 MEDICAL AND DENTAL PLAN;
 26 SALESFORCE.COM, INC., dba
 27 DELAWARE SALESFORCE.COM, a
 28 Delaware corporation;
 SALESFORCE.COM HEALTH AND
 WELFARE PLAN; ERICSSON INC.,
 dba EUS INC., a Delaware corporation;
 ERICSSON FLEXIBLE BENEFITS
 PLAN; FACEBOOK, INC., a Delaware
 corporation; FACEBOOK, INC.
 HEALTH AND WELFARE PLAN;
 UNITED PARCEL OF AMERICA,
 INC., a Delaware corporation;
 UPS FLEXIBLE BENEFITS PLAN;
 ALTERA CORPORATION, dba
 DELAWARE ALTERA
 CORPORATION, a Delaware
 corporation; ALTERA CORPORATION
 HEALTH, LIFE AND DISABILITY
 PLAN; JABIL CIRCUIT, INC., a
 Delaware corporation; JABIL CIRCUIT,
 INC. HEALTH BENEFIT PLAN;
 AVAYA, INC., a Delaware corporation;
 AVAYA, INC. REPRESENTED
 EMPLOYEES POST-RETIREMENT
 HEALTH BENEFITS TRUST; THE
 AVAYA INC. HEALTH & WELFARE
 BENEFITS PLAN FOR SALARIED
 EMPLOYEES; AVAYA INC.
 MEDICAL EXPENSE PLAN; AVAYA
 INC. RETIREE MEDICAL EXPENSE

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1 PLAN FOR SALARIED EMPLOYEES;
 2 AVAYA INC. HEALTH & WELFARE
 3 BENEFITS PLAN; THE AVAYA INC.
 4 HEALTH AND WELFARE BENEFITS
 5 PLAN FOR RETIREES; THE AVAYA
 6 INC. HEALTH AND WELFARE
 7 BENEFITS PLAN FOR SALARIED
 8 RETIREES; BANK OF AMERICA
 9 CORPORATION, a Delaware
 10 corporation; BANK OF AMERICA
 11 GROUP BENEFITS PROGRAM;
 12 BANK OF AMERICA CORPORATION
 13 CORPORATE BENEFITS
 14 COMMITTEE;
 15 STMICROELECTRONICS, INC., a
 16 Delaware corporation;
 17 STMICROELECTRONICS, INC.
 18 EMPLOYEE WELFARE BENEFITS
 19 PLAN; CITIGROUP INC., a Delaware
 20 corporation; CITIGROUP FLEXIBLE
 21 BENEFITS PLAN; CITIGROUP
 22 HEALTH BENEFIT PLAN; CANON
 23 U.S.A., INC. a New York corporation;
 24 CANON WELFARE BENEFIT PLAN;
 25 SYMANTEC CORPORATION, a
 26 Delaware corporation; SYMANTEC
 27 CORPORATION GROUP WELFARE
 28 BENEFIT PLAN; SRI
 INTERNATIONAL, a California
 corporation; ECHELON
 CORPORATION, a Delaware
 corporation; ECHELON EMPLOYEE
 BENEFIT PLAN; VISHAY
 INTERTECHNOLOGY, INC., a
 Delaware corporation; VISHAY
 INTERTECHNOLOGY, INC.
 WELFARE PLAN; LIFE
 TECHNOLOGIES CORPORATION, a
 Delaware corporation; LIFE
 TECHNOLOGIES CORPORATION
 HEALTH AND WELFARE PLAN;
 TYCO ELECTRONICS
 CORPORATION, a Pennsylvania
 corporation; TYCO ELECTRONICS
 CORPORATION HEALTH AND
 WELFARE PLAN; ALIGN
 TECHNOLOGY, INC., dba (Delaware)
 ALIGN TECHNOLOGY, INC., a
 Delaware corporation; ALIGN
 TECHNOLOGY, INC. HEALTH AND
 WELFARE PLAN; INFOSYS
 LIMITED, an India corporation;
 INFOSYS LIMITED HEALTH &
 WELFARE BENEFIT PLAN; FIRST
 SOLAR, INC., a Delaware corporation;

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1 FIRST SOLAR, INC. GROUP HEALTH
 2 INSURANCE PLAN; RENESAS
 3 ELECTRONICS AMERICA, INC., a
 4 California corporation; RENESAS
 5 ELECTRONICS AMERICA INC.
 6 BENEFIT PLAN; PLEXUS CORP., a
 7 Wisconsin corporation; HEALTH PLAN
 8 FOR EMPLOYEES OF PLEXUS
 9 CORP; TUTOR PERINI
 10 CORPORATION, a Massachusetts
 11 corporation; TUTOR PERINI
 12 CORPORATION HEALTH AND
 13 WELFARE PLAN; CEPHEID, a
 14 California corporation; CEPHEID
 15 CONSOLIDATED WELFARE
 16 BENEFIT PLAN; HYATT
 17 CORPORATION, a Delaware
 18 corporation; HYATT CORPORATION
 19 WELFARE BENEFIT PLAN; GLOBAL
 20 FOUNDRIES U.S., INC., a Delaware
 21 corporation; GLOBALFOUNDRIES
 22 U.S., INC. WELFARE BENEFIT
 23 PLAN; LIVEOPS, INC., a Delaware
 24 corporation; LIVEOPS, INC. HEALTH
 25 AND WELFARE PLAN; SECURITAS
 26 SECURITY SERVICES USA, INC., a
 27 Delaware corporation; SECURITAS
 28 SECURITY SERVICES USA, INC.
 WELFARE BENEFIT PLAN;
 BRIDGE CAPITAL HOLDINGS, a
 California corporation; BRIDGE BANK,
 N.A. EMPLOYEE BENEFIT PLAN;
 SANMINA CORPORATION, a
 Delaware corporation; SANMINA
 CORPORATION HEALTH AND
 WELFARE BENEFIT PLAN;
 HOSPIRA, INC., a Delaware
 corporation; HOSPIRA FLEXIBLE
 BENEFITS PLAN; HOSPIRA HEALTH
 CARE PLAN; PANASONIC
 CORPORATION OF NORTH
 AMERICA, a Delaware corporation;
 PANASONIC GROUP
 COMPREHENSIVE MEDICAL AND
 DENTAL PLAN; DELL INC., a
 Delaware corporation; DELL, INC., c/o
 NICKI HUSCHKA; SONICWALL,
 INC. HEALTH & WELFARE BENEFIT
 PLAN; INFINEON TECHNOLOGIES
 NORTH AMERICA CORP, a Delaware
 corporation; INFINEON
 TECHNOLOGIES WELFARE
 BENEFIT PLAN; COX ENTERPRISES,
 INC., a Delaware corporation; COX
 ENTERPRISES, INC. WELFARE

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1 BENEFIT PLAN; CA, INC. a Delaware
 corporation; CA, INC.
 2 COMPREHENSIVE HEALTH AND
 WELFARE PLAN; SYBASE, INC., a
 3 Delaware corporation; SYBASE, INC.
 GROUP WELFARE PLAN;
 4 MANPOWER, INC./CALIFORNIA
 PENINSULA, a Wisconsin corporation;
 5 CHECK POINT SOFTWARE
 TECHNOLOGIES, INC., a Delaware
 6 corporation; CHECK POINT
 SOFTWARE TECHNOLOGIES INC.
 7 WELFARE PLAN; RELIANCE STEEL
 & ALUMINUM CO., a California
 8 corporation; RELIANCE STEEL &
 ALUMINUM CO., LIFE,
 9 ACCIDENTAL DEATH &
 DISMEMBERMENT HEALTH PLAN;
 10 TOYS 'R' US-DELAWARE, INC. a
 Delaware corporation; TOYS 'R' US
 11 EMPLOYEE BENEFIT PLAN;
 ADP TOTALSOURCE, INC., a Florida
 12 corporation; ADP TOTALSOURCE,
 INC. HEALTH AND WELFARE
 13 PLAN; OMRON MANAGEMENT
 CENTER OF AMERICA, INC., a
 14 Delaware corporation; OMRON
 MANAGEMENT CENTER OF
 15 AMERICA, INC. EMPLOYEE
 WELFARE PLAN; BMC SOFTWARE,
 16 INC. a Delaware corporation; BMC
 SOFTWARE, INC. HEALTH AND
 17 WELFARE BENEFIT PLAN; KPMG
 LLP, a Delaware limited liability
 18 partnership; KPMG LLP HEALTH
 PLANS; TESORO CORPORATION, a
 19 Delaware corporation; TESORO
 CORPORATION OMNIBUS GROUP
 20 WELFARE BENEFITS PLAN;
 MARSH & MCLENNAN
 21 COMPANIES, INC., a Delaware
 corporation; MARSH & MCLENNAN
 22 COMPANIES, INC. EMPLOYER
 FUNDED WELFARE BENEFIT PLAN;
 23 AMGEN, INC., a Delaware corporation;
 AMGEN, INC. MASTER BENEFITS
 24 PLAN; ARROW ELECTRONICS, INC.,
 a New York corporation; ARROW
 25 ELECTRONICS WELFARE BENEFITS
 PLAN; STANTEC CONSULTING
 26 SERVICES, INC., a New York
 corporation; STANTEC HEALTH
 27 PLAN; IHS, INC., a California
 corporation; IHS EMPLOYEE
 28 BENEFIT PLAN; J.C. PENNEY

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1 CORPORATION, INC., a Delaware
 corporation; J.C. PENNEY
 2 CORPORATION, INC. HEALTH &
 WELFARE BENEFITS PLAN; J.C.
 3 PENNEY CORPORATION, INC.
 BENEFITS ADMINISTRATION
 4 COMMITTEE; PIONEER NORTH
 AMERICA, INC., a Delaware
 5 corporation; PIONEER NORTH
 AMERICA, INC. GROUP LIFE,
 6 HEALTH DISABILITY PLAN;
 SUMTOTAL SYSTEMS, INC., a
 7 Delaware corporation; SUMTOTAL
 SYSTEMS GROUP HEALTH &
 8 WELFARE PLAN; INTEVAC, INC., a
 Delaware corporation; INTEVAC LIFE
 9 AND WELFARE PLAN; GCA
 SERVICES GROUP, INC., a Delaware
 10 corporation; GCA SERVICES GROUP
 HEALTH AND WELFARE PLAN;
 11 THE WESTERN UNION COMPANY,
 dba T.W.U.C., a Delaware corporation;
 12 THE WESTERN UNION COMPANY
 HEALTH AND WELFARE BENEFIT
 13 PLAN; NDS SURGICAL IMAGING
 LLC., a Delaware limited liability
 14 company; NDS SURGICAL IMAGING,
 LLC WELFARE BENEFITS PLAN;
 15 COMPASS GROUP USA, INC., a
 Delaware corporation; EMPLOYEE
 16 BENEFIT PLAN OF THE COMPASS
 GROUP USA, INC.; BAE SYSTEMS,
 17 INC., a Delaware corporation; BAE
 SYSTEMS FUNDED WELFARE
 18 BENEFIT PLAN; TIN INC., a Delaware
 corporation; TEMPLE-INLAND
 19 HEALTH & WELFARE BENEFITS
 WRAP PLAN; FIDELITY NATIONAL
 20 FINANCIAL, INC., a Delaware
 corporation; FIDELITY NATIONAL
 21 FINANCIAL, INC. WELFARE PLAN;
 SOFTWARE AG USA, INC., a
 22 Delaware corporation; SOFTWARE AG
 USA, INC. WELFARE BENEFITS
 23 PLAN; BAUSCH & LOMB
 INCORPORATED, a New York
 24 corporation; BAUSCH & LOMB
 COMPREHENSIVE MEDICAL PLAN;
 25 AVIDEX INDUSTRIES, L.L.C., a
 Washington limited liability company;
 26 AVIDEX INDUSTRIES HEALTH AND
 WELFARE BENEFIT PLAN;
 27 INNOVION CORPORATION, a
 California corporation; INNOVION
 28 CORP HEALTH PLAN; PINNACLE

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1 BANK, a California corporation;
 2 PINNACLE BANK; PARAGON
 3 BENEFITS; INVENTIV HEALTH,
 4 INC., a Delaware corporation;
 5 INVENTIV HEALTH, INC.
 6 EMPLOYEE HEALTH CARE
 7 PROGRAM; URS CORPORATION, a
 8 Delaware corporation; URS
 9 CORPORATION WELFARE
 10 BENEFITS PLAN; HARSCO
 11 CORPORATION, a Delaware
 12 corporation; HARSCO CORPORATION
 13 INSURANCE PLAN; RIGHT
 14 MANAGEMENT CONSULTANTS,
 15 INC., a Pennsylvania corporation; WPP
 16 GROUP HOLDINGS CORP., a
 17 Delaware corporation; WPP GROUP
 18 USA, INC. BENEFITS PLAN;
 19 FUSIONSTORM, a Delaware
 20 corporation; FUSIONSTORM HEALTH
 21 AND WELFARE PLAN; OWENS
 22 CORNING, a Delaware corporation;
 23 OWENS CORNING HEALTH CARE &
 24 BENEFITS PLAN FOR ACTIVE
 25 EMPLOYEES; GRAEBEL
 26 COMPANIES, INC., a Delaware
 27 corporation; GRAEBEL COMPANIES,
 28 INC. HEALTH AND WELFARE
 PLAN; INTELLECTUAL VENTURES
 MANAGEMENT, LLC, a Washington
 limited liability company;
 INTELLECTUAL VENTURES
 MANAGEMENT, LLC HEALTH AND
 WELFARE PLAN; ENCORE
 INDUSTRIES, INC., a Ohio corporation;
 ENCORE INDUSTRIES INC.
 EMPLOYEES WELFARE BENEFIT
 PLAN; KFORCE, INC., a Florida
 corporation; KFORCE INC. GROUP
 INSURANCE PLAN; SPX
 CORPORATION, a Delaware
 Corporation; SPX CORPORATION
 COMPREHENSIVE MEDICAL CARE
 PLAN; ADMINISTRATIVE
 COMMITTEE SPX CORPORATION;
 TOLT, LLC, a Delaware Limited
 Liability Company; TOLT SERVICE
 GROUP; TOLT TECHNOLOGIES
 BENEFIT WELFARE PLAN; UBS
 FINANCIAL SERVICES, INC., a
 Delaware corporation; UBS
 FINANCIAL SERVICES, INC. GROUP
 HEALTH AND WELFARE BENEFITS
 PLAN; LOUIS DIMARIA, C/O UBS
 FINANCIAL SERVICES, INC.

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1 ALCATEL-LUCENT U.S.A., INC., a
 2 Delaware corporation; ALCATEL-
 3 LUCENT MEDICAL EXPENSE PLAN
 4 FOR MANAGEMENT EMPLOYEES;
 5 ALCATEL-LUCENT MEDICAL
 6 EXPENSE PLAN FOR
 7 OCCUPATIONAL EMPLOYEES;
 8 AMAZON CORPORATE, LLC, a
 9 Delaware limited liability company;
 10 AUTOMATIC DATA PROCESSING
 11 INSURANCE AGENCY, INC., a New
 12 Jersey corporation; AUTOMATIC
 13 DATA PROCESSING, INC. FLEX 2000
 14 PLAN; BARRACUDA NETWORKS,
 15 INC., a Delaware corporation;
 16 BARRACUDA NETWORKS, INC.
 17 BENEFIT PLAN; BLUE COAT
 18 SYSTEMS, INC., a Delaware
 19 corporation; BLUE COST SYSTEMS,
 20 INC. FLEXIBLE BENEFIT PLAN;
 21 BOEHRINGER INGELHEIM
 22 FREMONT, INC., a Delaware
 23 corporation; BONHAMS &
 24 BUTTERFIELDS AUCTIONEERS
 25 CORPORATION; BUTTERFIELDS
 26 CONSOLIDATED WELFARE PLAN;
 27 BOOZ ALLEN HAMILTON, a
 28 Delaware corporation; BOOZ ALLEN
 HAMILTON INC. ALL RISK
 INSURANCE; CADENCE DESIGN
 SYSTEMS, INC., a Delaware
 corporation; CADENCE GROUP LIFE,
 HEALTH AND DISABILITY PLAN;
 CANON ANELVA CORP, a Japan
 corporation; CHIPOTLE MEXICAN
 GRILL, INC. a Delaware corporation;
 CHIPOTLE MEXICAN GRILL INC.
 FLEXIBLE BENEFITS PLAN;
 COACH, INC., a Maryland corporation;
 COACH, INC. WELFARE BENEFIT
 PLAN; COGNIZANT TECHNOLOGY
 SOLUTIONS U.S. CORPORATION, a
 Delaware corporation; COGNIZANT
 HEALTH & WELFARE BENEFIT
 PLAN; CORVEL CORPORATION, a
 Delaware corporation; CORVEL
 CORPORATION WELFARE
 BENEFITS PLAN; DIAGEO NORTH
 AMERICA INC., a Connecticut
 corporation; DURAN & VENEABLES,
 INC., a California corporation;
 DYNAMIC DETAILS DESIGN, LLC, a
 Delaware limited liability company;
 DYNAMIC DETAILS, INC.,
 WELFARE BENEFIT PLAN; EMULEX

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1 CORPORATION, a California
 2 corporation; EMULEX – THE
 3 FLEXIBLE BENEFITS PROGRAM
 4 FOR EMULEX EMPLOYEES;
 5 ERICSSON TELEVISION, INC., a
 6 Delaware corporation; ERICSSON
 7 TELEVISION, INC., EMPLOYEE
 8 BENEFIT PACKAGE;
 9 GLAXOSMITHKLINE, LLC, a
 10 Delaware limited liability company;
 11 GLAXOSMITHKLINE, HEALTH AND
 12 WELFARE BENEFITS PLAN;
 13 HGST, INC., a Delaware corporation;
 14 HITACHI GLOBAL
 15 STORAGE/TECHNOLOGIES, INC.
 16 WELFARE BENEFIT PLAN;
 17 INFOTECH ENTERPRISES
 18 AMERICA, INC., a California
 19 corporation; INFOTECH
 20 ENTERPRISES AMERICA, INC.
 21 MEDICAL AND DENTAL PLAN;
 22 J. CREW, INC., a Delaware corporation;
 23 GROUP INS. PLAN FOR
 24 ASSOCIATES OF J. CREW GROUP,
 25 INC.; L-3 COMMUNICATIONS
 26 CORPORATION, a Delaware
 27 corporation; L-3 COMMUNICATIONS
 28 FUNDED GROUP HEALTH AND
 WELFARE PLAN; LEHIGH HANSON,
 INC., a Delaware corporation; LEHIGH
 HANSON INC. HEALTH & WELFARE
 PLAN ACTIVE EMPLOYEES;
 MICROSEMI CORPORATION, a
 Delaware corporation; MICROSEMI
 GROUP BENEFITS PLAN; NATUS
 MEDICAL INCORPORATED, a
 Delaware corporation; NATUS
 MEDICAL HEALTH AND WELFARE
 PLAN; NORTHWESTERN
 POLYTECHNIC UNIVERSITY, a
 California corporation; OASIS
 OUTSOURCING HOLDINGS, INC., a
 Florida corporation; OASIS
 OUTSOURCING HOLDINGS, INC.
 EMPLOYEE WELFARE BENEFITS
 PLAN; OPTICOMP CORPORATION, a
 California corporation; PAYCHEX,
 INC., a Delaware corporation;
 PAYCHEX, INC., EMPLOYEE
 HEALTH BENEFITS PLAN;
 PVH CORP., a Delaware corporation;
 PVH CORP. & SUBSIDIARIES
 HEALTH & WELFARE PLAN;
 POLE TO WIN AMERICA, INC., a
 California corporation; SCIENCE

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1 APPLICATIONS INTERNATIONAL
 2 CORP., a Delaware corporation;
 3 SCIENCE APPLICATIONS
 4 INTERNATIONAL CORPORATION
 5 WELFARE BENEFITS TRUST;
 6 SEMTECH CORP., a Delaware
 7 corporation; SEMTECH CORP GROUP
 8 MEDICAL AND DENTAL PLAN; R.
 9 STEVEN PETERS, INC., a California
 10 corporation; TE CONNECTIVITY
 11 NETWORKS, INC., a Delaware
 12 corporation; TELENV, INC., a
 13 Delaware corporation; TELENV
 14 HEALTH AND WELFARE PLAN;
 15 TRIDENT MICROSYSTEMS, INC., a
 16 California corporation; TRIDENT
 17 MICROSYSTEMS, INC. HEALTH
 18 AND WELFARE BENEFIT PLAN;
 19 THE KLEINFELDER GROUP, INC., a
 20 California corporation; THE
 21 KLEINFELDER GROUP, INC.
 22 HEALTH AND WELFARE PLAN;
 23 TOYOTA MOTOR SALES USA, INC.,
 24 a California corporation; TWEEN
 25 BRANDS, INC., a Delaware
 26 corporation; TWEEN BRANDS, INC.,
 27 COMPREHENSIVE WELFARE
 28 BENEFITS PLAN; UNISOURCE
 WORLDWIDE, INC., a Delaware
 corporation; VITESSE
 SEMICONDUCTOR CORPORATION,
 a Delaware corporation; VWR
 INTERNATIONAL, LLC., a Delaware
 limited liability company; VWR
 INTERNATIONAL, LLC WELFARE
 BENEFIT PLAN; WPG AMERICAS,
 INC, a California corporation; WPG
 AMERICAS HEALTH AND
 WELFARE PLAN; WYCLIFFE BIBLE
 TRANSLATORS, INC., a California
 corporation; WYCLIFFE BIBLE
 TRANSLATORS, INC. MEDICAL
 HEALTH PLAN HMO; AL-RAZAQ
 ENTERPRISES GROUP
 INCORPORATED, a Texas corporation;
 CORDEVALLE, L.P., a California
 limited partnership; CORDEVALLE
 WELFARE BENEFITS PLAN; FIRST
 AMERICAN FINANCIAL
 CORPORATION, a Delaware
 corporation; FIRST AMERICAN
 FINANCIAL CORPORATION GROUP
 LIFE, MEDICAL, DENTAL &
 DISABILITY BENEFITS TRUST;
 K.R. ANDERSON, INC., a California

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corporation; K.R. ANDERSON GROUP WELFARE PLAN; LVI SERVICES, INC., a Delaware corporation; LVI SERVICES, INC. HEALTH BENEFIT PLAN; PRAXAIR, INC., a Delaware corporation; PRAXAIR MEDICAL PLAN; SCI MANAGEMENT, LLC, a Minnesota limited liability company; ZETTA, INC., dba DELAWARE ZETTA, a Delaware corporation; LUMINEX CORPORATION, a Delaware corporation; HATHAWAY DINWIDDIE CONSTRUCTION COMPANY, a California corporation; HATHAWAY DINWIDDIE GROUP MEDICAL AND DENTAL PLAN; SAUDI ARABIAN CULTURAL MISSION; ROYAL EMBASSY OF SAUDI ARABIA; UNITED STATES DEPARTMENT OF DEFENSE, a governmental agency; FARMERS INSURANCE COMPANY, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

PLAINTIFFS Bay Area Surgical Group, Inc., Knowles Surgery Center, LLC, National Ambulatory Surgery Center, LLC, Los Altos Surgery Center, LP, Forest Ambulatory Surgical Associates, LP, and SOAR Surgery Center, LLC, allege as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because the action arises under the laws of the United States and pursuant to 29 U.S.C. § 1332(e)(1), because the action seeks to enforce rights under the Employee Retirement Income Security Act (“ERISA”).

2. This Court is the proper venue for this action pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this Judicial District, and because one or more of the Defendants conducts a substantial amount of business in this Judicial District;

1 and pursuant to 29 U.S.C. § 1132(e)(2) because it is the Judicial District where the
 2 breach took place, and because one or more of the Defendants conducts a substantial
 3 amount of business in this Judicial District.

4 **II. THE PARTIES**

5 **A. Plaintiffs**

6 3. Plaintiff Bay Area Surgical Group, Inc. is, and at all relevant times was,
 7 a California corporation with its principal place of business in Santa Clara,
 8 California.

9 4. Knowles Surgery Center, LLC, is, and at all relevant times was, a
 10 California limited liability company with its principal place of business in Los
 11 Gatos, California.

12 5. National Ambulatory Surgery Center, LLC, is, and at all relevant times
 13 was, a California limited liability company with its principal place of business in
 14 Los Gatos, California.

15 6. Los Altos Surgery Center, LP, is, and at all relevant times was, a
 16 California limited partnership with its principal place of business in Los Altos,
 17 California.

18 7. Forest Ambulatory Surgical Associates, LP, is, and at all relevant times
 19 was, a California limited partnership with its principal place of business in San Jose,
 20 California.

21 8. SOAR Surgery Center, LLC, is, and at all relevant times was, a
 22 California limited liability company with its principal place of business in
 23 Burlingame, California.

24 **B. Aetna**

25 9. PLAINTIFFS are informed and believe that Defendant Aetna Life
 26 Insurance Company ("Aetna") is a Connecticut corporation with its principal place
 27 of business located in Hartford, Connecticut. Aetna conducts business in the State
 28 of California, including in the County of San Jose.

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10. PLAINTIFFS are informed and believe that, in many instances, Aetna is the designated plan fiduciary for the self-funded ERISA plans defendants at issue in this action. PLAINTIFFS are further informed and believe that Aetna serves as the named plan administrator's "designee" for certain self-funded employee benefit plans. PLAINTIFFS are informed and believe that Aetna exercised fiduciary responsibility with respect to the claims at issue in this litigation. Because Aetna acted as a fiduciary with respect to the claims at issue, exercised benefits discretion and determined final benefit appeals, Aetna is liable for nonpaid and underpaid benefits to PLAINTIFFS.

11. PLAINTIFFS are further informed and believe that, with respect to self-funded ERISA plans which have not specifically designated a plan administrator, Aetna functions as the *de facto* plan administrator, or as the co-administrator because, *inter alia*, it has provided plan documents to participants, received benefit claims, evaluated and processed those claims, interpreted ERISA plan documents, made benefit determinations, made and administered benefit payments, and handled appeals of benefit determinations. Moreover, PLAINTIFFS are informed and believe that, even with respect to self-funded ERISA plans which have not specifically designated a plan administrator, Aetna has been specifically been designated as the claims administrator, and has been delegated the responsibilities described above. Specifically, with respect to all of the claims at issue herein, including with respect to self-funded plans which have not been named as defendants in this action, Plaintiffs are informed and believe that Aetna:

- a. drafted and provided plan members with plan documents;
- b. operated a centralized verification and authorization telephone number which handled calls for members of the self-funded plans, including plans that have not been named as defendants in this Complaint;
- c. authorized PLAINTIFFS to provide medical services to beneficiaries of the ERISA plan defendants;

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- d. received and processed electronic bills from PLAINTIFFS for claims for members of the self-funded plans, including plans that are not named as defendants in this Complaint;
- e. communicated with PLAINTIFFS on behalf of the ERISA plans (and additional self-insured plans that are not named as defendants) regarding authorization of surgical procedures;
- f. issued remittance advices and EOBs;
- g. priced claims for the self-insured ERISA plans;
- h. communicated with PLAINTIFFS with respect to the processing of claims on behalf of the Defendants and self-insured plans;
- i. processed appeals, and sent appeal response letters; and in certain cases, issued payment.

12. Accordingly, Aetna is a proper ERISA defendant because it “effectively controlled the decision whether to honor or to deny a claim” Cyr v. Reliance Life Ins. Co., 642 F.3d 1202, 1204 (9th Cir. 2011) (en banc).

C. ERISA Plan Defendants

13. PLAINTIFFS are informed and believe that Defendant Lockheed Martin Corporation is a Maryland corporation with its corporate headquarters located in Bethesda, Maryland. PLAINTIFFS are informed and believe that Lockheed Martin Corporation is a plan sponsor and plan administrator for Defendants Lockheed Martin Healthworks Plan and Lockheed Martin Corporation Flexible Benefits Plan.

14. PLAINTIFFS are informed and believe that Defendants Lockheed Martin Healthworks Plan and Lockheed Martin Corporation Flexible Benefits Plan are ERISA plans and proper defendants pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

15. PLAINTIFFS are informed and believe that Defendant Adobe Systems Incorporated is a Delaware corporation with its corporate headquarters located in San Jose, California. PLAINTIFFS are informed and believe that Adobe Systems

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1 Incorporated is a plan sponsor and plan administrator for Defendant Adobe Systems
 2 Incorporated Group Welfare Plan.

3 16. PLAINTIFFS are informed and believe that Defendant Adobe Systems
 4 Incorporated Group Welfare Plan is an ERISA plan and a proper defendant pursuant
 5 to ERISA § 502(d), 29 U.S.C. § 1132(d).

6 17. PLAINTIFFS are informed and believe that Defendant Costco
 7 Wholesale Corporation is a Washington corporation with its corporate headquarters
 8 located in Seattle, Washington. PLAINTIFFS are informed and believe that Costco
 9 Wholesale Corporation is a plan sponsor and plan administrator for Defendant
 10 Costco Wholesale Corporation Employee Benefits Program.

11 18. PLAINTIFFS are informed and believe that Defendant Costco
 12 Wholesale Corporation Employee Benefits Program is an ERISA plan and a proper
 13 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

14 PLAINTIFFS are informed and believe that Defendant Applied Materials,
 15 Inc., is a Delaware corporation with its corporate headquarters located in Santa
 16 Clara, California. PLAINTIFFS are informed and believe that Applied Materials,
 17 Inc., is a plan sponsor and plan administrator for Defendant Applied Materials, Inc.
 18 Welfare Plan.

19 19. PLAINTIFFS are informed and believe that Defendant Applied
 20 Materials, Inc. Welfare Plan is an ERISA plan and a proper defendant pursuant to
 21 ERISA § 502(d), 29 U.S.C. § 1132(d).

22 20. PLAINTIFFS are informed and believe that Defendant Broadcom
 23 Corporation is a California corporation with its corporate headquarters located in
 24 Irvine, California. PLAINTIFFS are informed and believe that Broadcom
 25 Corporation is a plan sponsor and plan administrator for Defendant Broadcom
 26 Corporation Welfare Plan.

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21. PLAINTIFFS are informed and believe that Defendant Broadcom Corporation Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

22. PLAINTIFFS are informed and believe that Defendant VMware, Inc. is a Delaware corporation with its corporate headquarters located in Palo Alto, California. PLAINTIFFS are informed and believe that VMware, Inc., is a plan sponsor and plan administrator for Defendants VMware, Inc. Flexible Spending Account Plan and VMware Group Health Plan.

23. PLAINTIFFS are informed and believe that Defendants VMware, Inc. Flexible Spending Account Plan and VMware Group Health Plan are ERISA plans and proper defendants pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

24. PLAINTIFFS are informed and believe that Defendant Yahoo! Inc. is a Delaware corporation with its corporate headquarters located in Sunnyvale, California. PLAINTIFFS are informed and believe that Yahoo! Inc. is a plan sponsor and plan administrator for Defendant Yahoo Inc. Health and Welfare Plan.

25. PLAINTIFFS are informed and believe that Defendant Yahoo Inc. Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

26. PLAINTIFFS are informed and believe that Defendant Xilinx, Inc., is a Delaware corporation with its corporate headquarters located in San Jose, California. PLAINTIFFS are informed and believe that Xilinx, Inc., is a plan sponsor and plan administrator for Defendant Xilinx, Inc. Health and Welfare Plan.

27. PLAINTIFFS are informed and believe that Defendant Xilinx, Inc. Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

28. PLAINTIFFS are informed and believe that Defendant Becton Dickinson and Company is a New Jersey corporation with its corporate headquarters located in Franklin Lakes, New Jersey. PLAINTIFFS are informed and believe that

1 Becton Dickinson and Company is a plan sponsor and plan administrator for an
2 ERISA plan entitled Group Life and Health Plan.

3 29. PLAINTIFFS are informed and believe that Defendant SAP America,
4 Inc. is a Delaware corporation with its corporate headquarters located in Newtown
5 Square, Pennsylvania. PLAINTIFFS are informed and believe that SAP America,
6 Inc., is a plan sponsor and plan administrator for Defendant SAP America Health &
7 Welfare Plan.

8 30. PLAINTIFFS are informed and believe that Defendant SAP America
9 Health & Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA
10 § 502(d), 29 U.S.C. § 1132(d).

11 31. PLAINTIFFS are informed and believe that Defendant National
12 Semiconductor Corporation is a Delaware corporation with its corporate
13 headquarters located in Dallas, Texas. PLAINTIFFS are informed and believe that
14 National Semiconductor Corporation is a plan sponsor and plan administrator for
15 Defendants National Semiconductor Corporation Flexible Life Insurance Plan and
16 National Semiconductor Corporation Comprehensive Medical and Dental Plan.

17 32. PLAINTIFFS are informed and believe that Defendants National
18 Semiconductor Corporation Flexible Life Insurance Plan and National
19 Semiconductor Corporation Comprehensive Medical and Dental Plan are ERISA
20 plans and proper defendants pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

21 33. PLAINTIFFS are informed and believe that Defendant Salesforce.com,
22 Inc., d/b/a Delaware Salesforce.com, is a Delaware corporation with its corporate
23 headquarters located in San Francisco, California. PLAINTIFFS are informed and
24 believe that Salesforce.com, Inc., is a plan sponsor and plan administrator for
25 Defendant Salesforce.com Health and Welfare Plan.

26 34. PLAINTIFFS are informed and believe that Defendant Salesforce.com
27 Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to
28 ERISA § 502(d), 29 U.S.C. § 1132(d).

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1 35. PLAINTIFFS are informed and believe that Defendant Ericsson Inc.,
 2 d/b/a EUS Inc., is a Delaware corporation with its corporate headquarters located in
 3 Plano, Texas. PLAINTIFFS are informed and believe that Ericsson Inc. is a plan
 4 sponsor and plan administrator for Defendant Ericsson Flexible Benefits Plan.

5 36. PLAINTIFFS are informed and believe that Defendant Ericsson
 6 Flexible Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA
 7 § 502(d), 29 U.S.C. § 1132(d).

8 37. PLAINTIFFS are informed and believe that Defendant Facebook, Inc.,
 9 is a Delaware corporation with its corporate headquarters located in Menlo Park,
 10 California. PLAINTIFFS are informed and believe that Facebook, Inc., is a plan
 11 sponsor and plan administrator for Defendant Facebook, Inc. Health and Welfare
 12 Plan.

13 38. PLAINTIFFS are informed and believe that Defendant Facebook, Inc.
 14 Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to
 15 ERISA § 502(d), 29 U.S.C. § 1132(d).

16 39. PLAINTIFFS are informed and believe that Defendant United Parcel
 17 Service of America, Inc. is a Delaware corporation with its corporate headquarters
 18 located in Atlanta, Georgia. PLAINTIFFS are informed and believe that United
 19 Parcel Service of America, Inc. is a plan sponsor and plan administrator for
 20 Defendant UPS Flexible Benefits Plan.

21 40. PLAINTIFFS are informed and believe that Defendant UPS Flexible
 22 Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d),
 23 29 U.S.C. § 1132(d).

24 41. PLAINTIFFS are informed and believe that Defendant Altera
 25 Corporation, d/b/a Delaware Altera Corporation, is a Delaware corporation with its
 26 corporate headquarters located in San Jose, California. PLAINTIFFS are informed
 27 and believe that Altera Corporation is a plan sponsor and plan administrator for
 28 Defendant Altera Corporation Health, Life and Disability Plan.

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42. PLAINTIFFS are informed and believe that Defendant Altera Corporation Health, Life and Disability Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

43. PLAINTIFFS are informed and believe that Defendant Jabil Circuit, Inc., is a Delaware corporation with its corporate headquarters located in St. Petersburg, Florida. PLAINTIFFS are informed and believe that Jabil Circuit, Inc., is a plan sponsor and plan administrator for Defendant Jabil Circuit, Inc. Health Benefit Plan.

44. PLAINTIFFS are informed and believe that Defendant Jabil Circuit, Inc. Health Benefit Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

45. PLAINTIFFS are informed and believe that Defendant Avaya, Inc., is a Delaware corporation with its corporate headquarters located in Basking Ridge, New Jersey. PLAINTIFFS are informed and believe that Avaya, Inc., is a plan sponsor and plan administrator for Defendants Avaya, Inc. Represented Employees Post-Retirement Health Benefits Trust, the Avaya Inc. Health & Welfare Benefits Plan for Salaried Employees, Avaya Inc. Medical Expense Plan, Avaya Inc. Retiree Medical Expense Plan for Salaried Employees, Avaya Inc. Health & Welfare Benefits Plan, The Avaya Inc. Health and Welfare Benefits Plan for Retirees, and The Avaya Inc. Health and Welfare Benefits Plan for Salaried Retirees.

46. PLAINTIFFS are informed and believe that Defendants Avaya, Inc. Represented Employees Post-Retirement Health Benefits Trust, the Avaya Inc. Health & Welfare Benefits Plan for Salaried Employees, Avaya Inc. Medical Expense Plan., Avaya Inc. Retiree Medical Expense Plan for Salaried Employees, Avaya Inc. Health & Welfare Benefits Plan, The Avaya Inc. Health and Welfare Benefits Plan for Retirees, and The Avaya Inc. Health and Welfare Benefits Plan for Salaried Retirees are ERISA plans and proper defendants pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

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47. PLAINTIFFS are informed and believe that Defendant Bank of America Corporation, is a Delaware corporation with its corporate headquarters located in Charlotte, North Carolina. PLAINTIFFS are informed and believe that Bank of America Corporation is a plan sponsor for Defendant Bank of America Group Benefits Program.

48. PLAINTIFFS are informed and believe that Defendant Bank of America Corporation Corporate Benefits Committee is a plan administrator for Defendant Bank of America Group Benefits Program.

49. PLAINTIFFS are informed and believe that Defendant Bank of America Group Benefits Program is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

50. PLAINTIFFS are informed and believe that Defendant STMicroelectronics, Inc., is a Delaware corporation with its corporate headquarters located in Coppel, Texas. PLAINTIFFS are informed and believe that STMicroelectronics, Inc., is a plan sponsor and plan administrator for Defendant STMicroelectronics, Inc. Employee Welfare Benefits Plan.

51. PLAINTIFFS are informed and believe that Defendant STMicroelectronics, Inc. Employee Welfare Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

52. PLAINTIFFS are informed and believe that Defendant Citigroup Inc., is a Delaware corporation with its corporate headquarters located in New York, New York. PLAINTIFFS are informed and believe that Citigroup Inc. is a plan sponsor for Defendants Citigroup Flexible Benefits Plan and Citigroup Health Benefit Plan.

53. PLAINTIFFS are informed and believe that Defendant Plans Administration Committee Citigroup Inc. is a plan administrator for Defendants Associates Medical, Dental, Vision Plan and Citigroup Flexible Benefits Plan.

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54. PLAINTIFFS are informed and believe that Defendants Citigroup Flexible Benefits Plan and Citigroup Health Benefit Plan are ERISA plans and proper defendants pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

55. PLAINTIFFS are informed and believe that Defendant Canon U.S.A., Inc., is a New York corporation with its corporate headquarters located in Lake Success, New York. PLAINTIFFS are informed and believe that Canon U.S.A., Inc., is a plan sponsor and plan administrator for Defendant Canon Welfare Benefit Plan.

56. PLAINTIFFS are informed and believe that Defendant Canon Welfare Benefit Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

57. PLAINTIFFS are informed and believe that Defendant Symantec Corporation is a Delaware corporation with its corporate headquarters located in Mountain View, California. PLAINTIFFS are informed and believe that Symantec Corporation is a plan sponsor and plan administrator for Defendant Symantec Corporation Group Welfare Benefit Plan.

58. PLAINTIFFS are informed and believe that Defendant Symantec Corporation Group Welfare Benefit Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

59. PLAINTIFFS are informed and believe that Defendant SRI International is a California corporation with its corporate headquarters located in Menlo Park, California. PLAINTIFFS are informed and believe that SRI International is a plan sponsor and plan administrator for an ERISA plan entitled Group Health & Welfare Benefit Plan.

60. PLAINTIFFS are informed and believe that Defendant Echelon Corporation is a Delaware corporation with its corporate headquarters located in San Jose, California. PLAINTIFFS are informed and believe that Echelon Corporation

1 is a plan sponsor and plan administrator for Defendant Echelon Employee Benefit
2 Plan.

3 61. PLAINTIFFS are informed and believe that Defendant Echelon
4 Employee Benefit Plan is an ERISA plan and a proper defendant pursuant to ERISA
5 § 502(d), 29 U.S.C. § 1132(d).

6 62. PLAINTIFFS are informed and believe that Defendant Vishay
7 Intertechnology, Inc., is a Delaware corporation with its corporate headquarters
8 located in Malvern, Pennsylvania. PLAINTIFFS are informed and believe that
9 Vishay Intertechnology, Inc., is a plan sponsor and plan administrator for Defendant
10 Vishay Intertechnology, Inc. Welfare Plan.

11 63. PLAINTIFFS are informed and believe that Defendant Vishay
12 Intertechnology, Inc. Welfare Plan is an ERISA plan and a proper defendant
13 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

14 64. PLAINTIFFS are informed and believe that Defendant Life
15 Technologies Corporation is a Delaware corporation with its corporate headquarters
16 located in Carlsbad, California. PLAINTIFFS are informed and believe that Life
17 Technologies Corporation is a plan sponsor and plan administrator for Defendant
18 Life Technologies Corporation Health and Welfare Plan.

19 65. PLAINTIFFS are informed and believe that Defendant Life
20 Technologies Corporation Health and Welfare Plan is an ERISA plan and a proper
21 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

22 66. PLAINTIFFS are informed and believe that Defendant Tyco
23 Electronics Corporation is a Pennsylvania corporation with its corporate
24 headquarters located in Berwyn, Pennsylvania. PLAINTIFFS are informed and
25 believe that Tyco Electronics Corporation is a plan sponsor and plan administrator
26 for Defendant Tyco Electronics Corporation Health and Welfare Benefits Plan.

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1 67. PLAINTIFFS are informed and believe that Defendant Tyco
 2 Electronics Corporation Health and Welfare Benefits Plan is an ERISA plan and a
 3 proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

4 68. PLAINTIFFS are informed and believe that Defendant Align
 5 Technology, Inc., d/b/a (Delaware) Align Technology, Inc., is a Delaware
 6 corporation with its corporate headquarters located in San Jose, California.
 7 PLAINTIFFS are informed and believe that Align Technology, Inc., is a plan
 8 sponsor and plan administrator for Defendant Align Technology, Inc. Health and
 9 Welfare Plan.

10 69. PLAINTIFFS are informed and believe that Defendant Align
 11 Technology, Inc. Health and Welfare Plan is an ERISA plan and a proper defendant
 12 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

13 70. PLAINTIFFS are informed and believe that Defendant Infosys Limited
 14 is an India corporation with its corporate headquarters located in Newark,
 15 California. PLAINTIFFS are informed and believe that Infosys Limited is a plan
 16 sponsor and plan administrator for Defendant Infosys Limited Health & Welfare
 17 Benefit Plan.

18 71. PLAINTIFFS are informed and believe that Defendant Infosys Limited
 19 Health & Welfare Benefit Plan is an ERISA plan and a proper defendant pursuant to
 20 ERISA § 502(d), 29 U.S.C. § 1132(d).

21 72. PLAINTIFFS are informed and believe that Defendant First Solar, Inc.,
 22 is a Delaware corporation with its corporate headquarters located in Tempe,
 23 Arizona. PLAINTIFFS are informed and believe that First Solar, Inc., is a plan
 24 sponsor and plan administrator for Defendant First Solar, Inc. Group Health
 25 Insurance Plan.

26 73. PLAINTIFFS are informed and believe that Defendant First Solar, Inc.
 27 Group Health Insurance Plan is an ERISA plan and a proper defendant pursuant to
 28 ERISA § 502(d), 29 U.S.C. § 1132(d).

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1 74. PLAINTIFFS are informed and believe that Defendant Renesas
 2 Electronics America Inc. is a California corporation with its corporate headquarters
 3 located in Santa Clara, California. PLAINTIFFS are informed and believe that
 4 Renesas Electronics America Inc. is a plan sponsor and plan administrator for
 5 Defendant Renesas Electronics America Inc. Benefit Plan.

6 75. PLAINTIFFS are informed and believe that Defendant Renesas
 7 Electronics America Inc. Benefit Plan is an ERISA plan and a proper defendant
 8 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

9 76. PLAINTIFFS are informed and believe that Defendant Plexus Corp. is
 10 a Wisconsin corporation with its corporate headquarters located in Neenah,
 11 Wisconsin. PLAINTIFFS are informed and believe that Plexus Corp. is a plan
 12 sponsor and plan administrator for Defendant Health Plan for Employees of Plexus
 13 Corp.

14 77. PLAINTIFFS are informed and believe that Defendant Health Plan for
 15 Employees of Plexus Corp is an ERISA plan and a proper defendant pursuant to
 16 ERISA § 502(d), 29 U.S.C. § 1132(d).

17 78. PLAINTIFFS are informed and believe that Defendant Tutor Perini
 18 Corporation is a Massachusetts corporation with its corporate headquarters located
 19 in Sylmar, California. PLAINTIFFS are informed and believe that Tutor Perini
 20 Corporation is a plan sponsor and plan administrator for Defendant Tutor Perini
 21 Corporation Health and Welfare Plan.

22 79. PLAINTIFFS are informed and believe that Defendant Tutor Perini
 23 Corporation Health and Welfare Plan is an ERISA plan and a proper defendant
 24 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

25 80. PLAINTIFFS are informed and believe that Defendant Cepheid is a
 26 California corporation with its corporate headquarters located in Sunnyvale,
 27 California. PLAINTIFFS are informed and believe that Cepheid is a plan sponsor
 28 and plan administrator for Defendant Cepheid Consolidated Welfare Benefit Plan.

1 81. PLAINTIFFS are informed and believe that Defendant Cepheid
 2 Consolidated Welfare Benefit Plan is an ERISA plan and a proper defendant
 3 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

4 82. PLAINTIFFS are informed and believe that Defendant Hyatt
 5 Corporation is a Delaware corporation with its corporate headquarters located in
 6 Chicago, Illinois. PLAINTIFFS are informed and believe that Hyatt Corporation is
 7 a plan sponsor and plan administrator for Defendant Hyatt Corporation Welfare
 8 Benefit Plan.

9 83. PLAINTIFFS are informed and believe that Defendant Hyatt
 10 Corporation Welfare Benefit Plan is an ERISA plan and a proper defendant pursuant
 11 to ERISA § 502(d), 29 U.S.C. § 1132(d).

12 84. PLAINTIFFS are informed and believe that Defendant
 13 GLOBALFOUNDRIES U.S. Inc. is a Delaware corporation with its corporate
 14 headquarters located in Milpitas, California. PLAINTIFFS are informed and believe
 15 that GLOBALFOUNDRIES U.S. Inc. is a plan sponsor and plan administrator for
 16 Defendant GLOBALFOUNDRIES U.S. Inc. Welfare Benefit Plan.

17 85. PLAINTIFFS are informed and believe that Defendant
 18 GLOBALFOUNDRIES U.S. Inc. Welfare Benefit Plan is an ERISA plan and a
 19 proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

20 86. PLAINTIFFS are informed and believe that Defendant LiveOps, Inc.,
 21 is a Delaware corporation with its corporate headquarters located in Redwood City,
 22 California. PLAINTIFFS are informed and believe that LiveOps, Inc., is a plan
 23 sponsor and plan administrator for Defendant LiveOps, Inc. Health and Welfare
 24 Plan.

25 87. PLAINTIFFS are informed and believe that LiveOps, Inc. Health and
 26 Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d),
 27 29 U.S.C. § 1132(d).

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1 88. PLAINTIFFS are informed and believe that Defendant Securitas
 2 Security Services USA, Inc., is a Delaware corporation with its corporate
 3 headquarters located in Westlake Village, California. PLAINTIFFS are informed
 4 and believe that Securitas Security Services USA, Inc., is a plan sponsor and plan
 5 administrator for Defendant Securitas Security Services USA, Inc. Welfare Benefit
 6 Plan.

7 89. PLAINTIFFS are informed and believe that Defendant Securitas
 8 Security Services USA, Inc. Welfare Benefit Plan is an ERISA plan and a proper
 9 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

10 90. PLAINTIFFS are informed and believe that Defendant Bridge Capital
 11 Holdings is a California corporation with its corporate headquarters located in San
 12 Jose, California. PLAINTIFFS are informed and believe that Bridge Capital
 13 Holdings is a plan sponsor and plan administrator for Defendant Bridge Bank, N.A.
 14 Employee Benefit Plan.

15 91. PLAINTIFFS are informed and believe that Bridge Bank, N.A.
 16 Employee Benefit Plan is an ERISA plan and a proper defendant pursuant to ERISA
 17 § 502(d), 29 U.S.C. § 1132(d).

18 92. PLAINTIFFS are informed and believe that Defendant Sanmina
 19 Corporation is a Delaware corporation with its corporate headquarters located in San
 20 Jose, California. PLAINTIFFS are informed and believe that Sanmina Corporation
 21 is a plan sponsor and plan administrator for Defendant Sanmina Corporation Health
 22 and Welfare Benefit Plan.

23 93. PLAINTIFFS are informed and believe that Defendant Sanmina
 24 Corporation Health and Welfare Benefit Plan is an ERISA plan and a proper
 25 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

26 94. PLAINTIFFS are informed and believe that Defendant Hospira, Inc., is
 27 a Delaware corporation with its corporate headquarters located in Lake Forest,
 28 Illinois. PLAINTIFFS are informed and believe that Hospira, Inc., is a plan sponsor

1 and plan administrator for Defendants Hospira Flexible Benefits Plan and Hospira
2 Health Care Plan.

3 95. PLAINTIFFS are informed and believe that Defendants Hospira
4 Flexible Benefits Plan and Hospira Health Care Plan are ERISA plans and proper
5 defendants pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

6 96. PLAINTIFFS are informed and believe that Defendant Panasonic
7 Corporation of North America is a Delaware corporation with its corporate
8 headquarters located in Newark, New Jersey. PLAINTIFFS are informed and
9 believe that Panasonic Corporation of North America is a plan sponsor and plan
10 administrator for Defendant Panasonic Group Comprehensive Medical and Dental
11 Plan.

12 97. PLAINTIFFS are informed and believe that Defendant Panasonic
13 Group Comprehensive Medical and Dental Plan is an ERISA plan and a proper
14 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

15 98. PLAINTIFFS are informed and believe that Defendant Dell Inc. is a
16 Delaware corporation with its corporate headquarters located in Round Rock, Texas.
17 PLAINTIFFS are informed and believe that Dell Inc. is a plan sponsor for
18 Defendant SonicWALL, Inc. Health & Welfare Benefit Plan.

19 99. PLAINTIFFS are informed and believe that Defendant Dell Inc. c/o
20 Nicki Huschka is a plan administrator for Defendant SonicWall, Inc. Health &
21 Welfare Benefit Plan.

22 100. PLAINTIFFS are informed and believe that Defendant SonicWALL,
23 Inc. Health & Welfare Benefit Plan is an ERISA plan and a proper defendant
24 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

25 101. PLAINTIFFS are informed and believe that Defendant Infineon
26 Technologies North America Corp. is a Delaware corporation with its corporate
27 headquarters located in Milpitas, California. PLAINTIFFS are informed and believe
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1 that Infineon Technologies North America Corp. is a plan sponsor and plan
 2 administrator for Defendant Infineon Technologies Welfare Benefit Plan.

3 102. PLAINTIFFS are informed and believe that Defendant Infineon
 4 Technologies Welfare Benefit Plan is an ERISA plan and a proper defendant
 5 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

6 103. PLAINTIFFS are informed and believe that Defendant Cox
 7 Enterprises, Inc., is a Delaware corporation with its corporate headquarters located
 8 in Atlanta, Georgia. PLAINTIFFS are informed and believe that Cox Enterprises,
 9 Inc., is a plan sponsor and plan administrator for Defendant Cox Enterprises, Inc.
 10 Welfare Benefit Plan.

11 104. PLAINTIFFS are informed and believe that Defendant Cox
 12 Enterprises, Inc. Welfare Benefit Plan is an ERISA plan and a proper defendant
 13 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

14 105. PLAINTIFFS are informed and believe that Defendant CA, Inc., is a
 15 Delaware corporation with its corporate headquarters located in Albany, New York.
 16 PLAINTIFFS are informed and believe that CA, Inc., is a plan sponsor for
 17 Defendant CA, Inc. Comprehensive Health and Welfare Plan.

18 106. PLAINTIFFS are informed and believe that CA, Inc., is a plan
 19 administrator for Defendant CA, Inc. Comprehensive Health and Welfare Plan.

20 107. PLAINTIFFS are informed and believe that Defendant CA, Inc.
 21 Comprehensive Health and Welfare Plan is an ERISA plan and a proper defendant
 22 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

23 108. PLAINTIFFS are informed and believe that Defendant Sybase, Inc. is a
 24 Delaware corporation with its corporate headquarters located in Dublin, California.
 25 PLAINTIFFS are informed and believe that Sybase, Inc. is a plan sponsor and plan
 26 administrator for Defendant Sybase, Inc. Group Welfare Plan.

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109. PLAINTIFFS are informed and believe that Defendant Sybase, Inc. Group Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

110. PLAINTIFFS are informed and believe that Defendant Manpower, Inc./California Peninsula is a Wisconsin corporation with its corporate headquarters located in Milwaukee, Wisconsin. PLAINTIFFS are informed and believe that Manpower, Inc./California Peninsula is a plan sponsor and plan administrator for an ERISA plan entitled Group Benefit Plans.

111. PLAINTIFFS are informed and believe that Defendant Check Point Software Technologies Inc. is a Delaware corporation with its corporate headquarters located in San Carlos, California. PLAINTIFFS are informed and believe that Check Point Software Technologies Inc. is a plan sponsor and plan administrator for Defendant Check Point Software Technologies Inc. Welfare Plan.

112. PLAINTIFFS are informed and believe that Defendant Check Point Software Technologies Inc. Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

113. PLAINTIFFS are informed and believe that Defendant Reliance Steel & Aluminum Co. is a California corporation with its corporate headquarters located in Los Angeles, California. PLAINTIFFS are informed and believe that Reliance Steel & Aluminum Co. is a plan sponsor and plan administrator for Defendant Reliance Steel & Aluminum Co. Life, Accidental Death & Dismemberment Health Plan.

114. PLAINTIFFS are informed and believe that Defendant Reliance Steel & Aluminum Co. Life, Accidental Death & Dismemberment Health Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

115. PLAINTIFFS are informed and believe that Defendant Toys 'R' Us-Delaware, Inc. is a Delaware corporation with its corporate headquarters located in

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Wayne, New Jersey. PLAINTIFFS are informed and believe that Toys 'R' Us- Delaware, Inc. is a plan sponsor and plan administrator for Defendant Toys 'R' Us Employee Benefit Plan.

116. PLAINTIFFS are informed and believe that Defendant Toys 'R' Us Employee Benefit Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

117. PLAINTIFFS are informed and believe that Defendant ADP TotalSource, Inc. is a Florida corporation with its corporate headquarters located in Miami, Florida. PLAINTIFFS are informed and believe that ADP TotalSource, Inc. is a plan sponsor and plan administrator for Defendant ADP TotalSource, Inc. Health and Welfare Plan.

118. PLAINTIFFS are informed and believe that Defendant ADP TotalSource, Inc. Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

119. PLAINTIFFS are informed and believe that Defendant ADP TotalSource, Inc. Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

120. PLAINTIFFS are informed and believe that Defendant Omron Management Center of America, Inc. is a Delaware corporation with its corporate headquarters located in Schaumburg, Illinois. PLAINTIFFS are informed and believe that Omron Management Center of America, Inc. is a plan sponsor and plan administrator for Defendant Omron Management Center of America Inc. Employee Welfare Plan.

121. PLAINTIFFS are informed and believe that Defendant Omron Management Center of America Inc. Employee Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

122. PLAINTIFFS are informed and believe that Defendant BMC Software, Inc. is a Delaware corporation with its corporate headquarters located in Houston,

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1 Texas. PLAINTIFFS are informed and believe that BMC Software, Inc. is a plan
 2 sponsor and plan administrator for Defendant BMC Software, Inc. Health and
 3 Welfare Benefit Plan.

4 123. PLAINTIFFS are informed and believe that Defendant BMC Software,
 5 Inc. Health and Welfare Benefit Plan is an ERISA plan and a proper defendant
 6 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

7 124. PLAINTIFFS are informed and believe that Defendant KPMG LLP is a
 8 Delaware limited liability partnership with its corporate headquarters located in
 9 Amsterdam, North Holland. PLAINTIFFS are informed and believe that KPMG
 10 LLP is a plan sponsor and plan administrator for Defendant KPMG LLP Health
 11 Plans.

12 125. PLAINTIFFS are informed and believe that Defendant KPMG LLP
 13 Health Plans is an ERISA plan and a proper defendant pursuant to ERISA § 502(d),
 14 29 U.S.C. § 1132(d).

15 126. PLAINTIFFS are informed and believe that Defendant Tesoro
 16 Corporation is a Delaware corporation with its corporate headquarters located in San
 17 Antonio, Texas. PLAINTIFFS are informed and believe that Tesoro Corporation is
 18 a plan sponsor and plan administrator for Defendant Tesoro Corporation Omnibus
 19 Group Welfare Benefits Plan.

20 127. PLAINTIFFS are informed and believe that Defendant Tesoro
 21 Corporation Omnibus Group Welfare Benefits Plan is an ERISA plan and a proper
 22 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

23 128. PLAINTIFFS are informed and believe that Defendant Marsh &
 24 McLennan Companies, Inc. is a Delaware corporation with its corporate
 25 headquarters located in New York, New York. PLAINTIFFS are informed and
 26 believe that Marsh & McLennan Companies, Inc. is a plan sponsor and plan
 27 administrator for Defendant Marsh & McLennan Companies, Inc. Employer Funded
 28 Welfare Benefit Plan.

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129. PLAINTIFFS are informed and believe that Marsh & McLennan Companies, Inc. Employer Funded Welfare Benefit Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

130. PLAINTIFFS are informed and believe that Defendant Amgen Inc. is a Delaware corporation with its corporate headquarters located in Newbury Park, California. PLAINTIFFS are informed and believe that Amgen Inc. is a plan sponsor and plan administrator for Defendant Amgen Inc. Master Benefits Plan.

131. PLAINTIFFS are informed and believe that Defendant Amgen Inc. Master Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

132. PLAINTIFFS are informed and believe that Defendant Arrow Electronics Inc. is a New York corporation with its corporate headquarters located in Melville, New York. PLAINTIFFS are informed and believe that Arrow Electronics Inc. is a plan sponsor and plan administrator for Defendant Arrow Electronics Welfare Benefits Plan.

133. PLAINTIFFS are informed and believe that Defendant Arrow Electronics Welfare Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

134. PLAINTIFFS are informed and believe that Defendant Stantec Consulting Services Inc. is a New York corporation with its corporate headquarters located in Edmonton, Alberta, Canada. PLAINTIFFS are informed and believe that Stantec Consulting Services Inc. is a plan sponsor and plan administrator for Defendant Stantec Health Plan.

135. PLAINTIFFS are informed and believe that Defendant Stantec Health Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

136. PLAINTIFFS are informed and believe that Defendant IHS, Inc. is a California corporation with its corporate headquarters located in La Mirada,

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1 California. PLAINTIFFS are informed and believe that IHS, Inc. is a plan sponsor
 2 and plan administrator for Defendant IHS Employee Benefit Plan.

3 137. PLAINTIFFS are informed and believe that Defendant IHS Employee
 4 Benefit Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d),
 5 29 U.S.C. § 1132(d).

6 138. PLAINTIFFS are informed and believe that Defendant J. C. Penney
 7 Corporation, Inc. is a Delaware corporation with its corporate headquarters located
 8 in Plano, Texas. PLAINTIFFS are informed and believe that J. C. Penney
 9 Corporation, Inc. is a plan sponsor for Defendant J. C. Penney Corporation, Inc.
 10 Health & Welfare Benefits Plan.

11 139. PLAINTIFFS are informed and believe that Defendant J. C. Penney
 12 Corporation, Inc. Benefits Administration Committee is a plan administrator for
 13 Defendant J. C. Penney Corporation, Inc. Health & Welfare Benefits Plan.

14 140. PLAINTIFFS are informed and believe that Defendant J. C. Penney
 15 Corporation, Inc. Health & Welfare Benefits Plan is an ERISA plan and a proper
 16 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

17 141. PLAINTIFFS are informed and believe that Defendant Pioneer North
 18 America, Inc. is a Delaware corporation with its corporate headquarters located in
 19 Long Beach, California. PLAINTIFFS are informed and believe that Pioneer North
 20 America, Inc. is a plan sponsor and plan administrator for Defendant Pioneer North
 21 America, Inc. Group Life, Health Disability Plan.

22 142. PLAINTIFFS are informed and believe that Defendant Pioneer North
 23 America, Inc. Group Life, Health Disability Plan is an ERISA plan and a proper
 24 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

25 143. PLAINTIFFS are informed and believe that Defendant SumTotal
 26 Systems, Inc. is a Delaware corporation with its corporate headquarters located in
 27 Gainesville, Florida. PLAINTIFFS are informed and believe that SumTotal
 28

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1 Systems, Inc. is a plan sponsor and plan administrator for Defendant SumTotal
 2 Systems Group Health & Welfare Plan.

3 144. PLAINTIFFS are informed and believe that Defendant SumTotal
 4 Systems Group Health & Welfare Plan is an ERISA plan and a proper defendant
 5 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

6 145. PLAINTIFFS are informed and believe that Defendant Intevac, Inc. is a
 7 Delaware corporation with its corporate headquarters located in Santa Clara,
 8 California. PLAINTIFFS are informed and believe that Intevac, Inc. is a plan
 9 sponsor and plan administrator for Defendant Intevac Life and Welfare Plan.

10 146. PLAINTIFFS are informed and believe that Defendant Intevac Life and
 11 Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d),
 12 29 U.S.C. § 1132(d).

13 147. PLAINTIFFS are informed and believe that Defendant GCA Services
 14 Group, Inc. is a Delaware corporation with its corporate headquarters located in
 15 Cleveland, Ohio. PLAINTIFFS are informed and believe that GCA Services Group,
 16 Inc. is a plan sponsor and plan administrator for Defendant GCA Services Group
 17 Health and Welfare Plan.

18 148. PLAINTIFFS are informed and believe that Defendant GCA Services
 19 Group Health and Welfare Plan is an ERISA plan and a proper defendant pursuant
 20 to ERISA § 502(d), 29 U.S.C. § 1132(d).

21 149. PLAINTIFFS are informed and believe that Defendant The Western
 22 Union Company, d/b/a T.W.U.C. is a Delaware corporation with its corporate
 23 headquarters located in Englewood, Colorado. PLAINTIFFS are informed and
 24 believe that The Western Union Company is a plan sponsor and plan administrator
 25 for Defendant The Western Union Company Health and Welfare Benefit Plan.

26 150. PLAINTIFFS are informed and believe that Defendant The Western
 27 Union Company Health and Welfare Benefit Plan is an ERISA plan and a proper
 28 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

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1 151. PLAINTIFFS are informed and believe that Defendant NDS Surgical
 2 Imaging, LLC is a Delaware limited liability company with its corporate
 3 headquarters located in San Jose, California. PLAINTIFFS are informed and
 4 believe that NDS Surgical Imaging, LLC is a plan sponsor and plan administrator
 5 for Defendant NDS Surgical Imaging, LLC Welfare Benefits Plan.

6 152. PLAINTIFFS are informed and believe that Defendant NDS Surgical
 7 Imaging, LLC Welfare Benefits Plan is an ERISA plan and a proper defendant
 8 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

9 153. PLAINTIFFS are informed and believe that Defendant Compass Group
 10 USA, Inc. is a Delaware corporation with its corporate headquarters located in
 11 Charlotte, North Carolina. PLAINTIFFS are informed and believe that Compass
 12 Group USA, Inc. is a plan sponsor and plan administrator for Defendant Employee
 13 Benefit Plan of the Compass Group USA, Inc.

14 154. PLAINTIFFS are informed and believe that Defendant Employee
 15 Benefit Plan of the Compass Group USA, Inc. is an ERISA plan and a proper
 16 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

17 155. PLAINTIFFS are informed and believe that Defendant BAE Systems,
 18 Inc. is a Delaware corporation with its corporate headquarters located in Herndon,
 19 Virginia. PLAINTIFFS are informed and believe that BAE Systems, Inc. is a plan
 20 sponsor and plan administrator for Defendant BAE Systems Funded Welfare Benefit
 21 Plan.

22 156. PLAINTIFFS are informed and believe that Defendant BAE Systems
 23 Funded Welfare Benefit Plan is an ERISA plan and a proper defendant pursuant to
 24 ERISA § 502(d), 29 U.S.C. § 1132(d).

25 157. PLAINTIFFS are informed and believe that Defendant TIN Inc. is a
 26 Delaware corporation with its corporate headquarters located in Dallas, Texas.
 27 PLAINTIFFS are informed and believe that TIN Inc. is a plan sponsor and plan
 28 administrator for Defendant Temple-Inland Health & Welfare Benefits Wrap Plan.

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1 158. PLAINTIFFS are informed and believe that Defendant Temple-Inland
 2 Health & Welfare Benefits Wrap Plan is an ERISA plan and a proper defendant
 3 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

4 159. PLAINTIFFS are informed and believe that Defendant Fidelity
 5 National Financial, Inc. is a Delaware corporation with its corporate headquarters
 6 located in Santa Ana, California. PLAINTIFFS are informed and believe that
 7 Fidelity National Financial, Inc. is a plan sponsor and plan administrator for
 8 Defendant Fidelity National Financial, Inc. Welfare Plan.

9 160. PLAINTIFFS are informed and believe that Defendant Fidelity
 10 National Financial, Inc. Welfare Plan is an ERISA plan and a proper defendant
 11 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

12 161. PLAINTIFFS are informed and believe that Defendant Software AG
 13 USA, Inc. is a Delaware corporation with its corporate headquarters located in
 14 Reston, Virginia. PLAINTIFFS are informed and believe that Software AG USA,
 15 Inc. is a plan sponsor and plan administrator for Defendant Software AG USA, Inc.
 16 Welfare Benefits Plan.

17 162. PLAINTIFFS are informed and believe that Defendant Software AG
 18 USA, Inc. Welfare Benefits Plan is an ERISA plan and a proper defendant pursuant
 19 to ERISA § 502(d), 29 U.S.C. § 1132(d).

20 163. PLAINTIFFS are informed and believe that Defendant Bausch & Lomb
 21 Incorporated is a New York corporation with its corporate headquarters located in
 22 Rochester, New York. PLAINTIFFS are informed and believe that Bausch & Lomb
 23 Incorporated is a plan sponsor and plan administrator for Defendant Bausch &
 24 Lomb Comprehensive Medical Plan.

25 164. PLAINTIFFS are informed and believe that Defendant Bausch & Lomb
 26 Comprehensive Medical Plan is an ERISA plan and a proper defendant pursuant to
 27 ERISA § 502(d), 29 U.S.C. § 1132(d).

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1 165. PLAINTIFFS are informed and believe that Defendant Avidex
 2 Industries, L.L.C. is a Washington limited liability company with its corporate
 3 headquarters located in Bellevue, Washington. PLAINTIFFS are informed and
 4 believe that Avidex Industries, L.L.C. is a plan sponsor and plan administrator for
 5 Defendant Avidex Industries Health and Welfare Benefit Plan.

6 166. PLAINTIFFS are informed and believe that Defendant Avidex
 7 Industries Health and Welfare Benefit Plan is an ERISA plan and a proper defendant
 8 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

9 167. PLAINTIFFS are informed and believe that Defendant Innovion
 10 Corporation is a California corporation with its corporate headquarters located in
 11 San Jose, California. PLAINTIFFS are informed and believe that Innovion
 12 Corporation is a plan sponsor and plan administrator for Defendant Innovion Corp
 13 Health Plan.

14 168. PLAINTIFFS are informed and believe that Defendant Innovion Corp
 15 Health Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d),
 16 29 U.S.C. § 1132(d).

17 169. PLAINTIFFS are informed and believe that Defendant Pinnacle Bank
 18 is a California corporation with its corporate headquarters located in Morgan Hill,
 19 California. PLAINTIFFS are informed and believe that Pinnacle Bank is a plan
 20 sponsor for Defendant Pinnacle Bank.

21 170. PLAINTIFFS are informed and believe that Defendant Paragon
 22 Benefits is a plan administrator for Defendant Pinnacle Bank.

23 171. PLAINTIFFS are informed and believe that Defendant Pinnacle Bank
 24 is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C.
 25 § 1132(d).

26 172. PLAINTIFFS are informed and believe that Defendant Inventiv Health,
 27 Inc. is a Delaware corporation with its corporate headquarters located in Burlington,
 28 Massachusetts. PLAINTIFFS are informed and believe that Inventiv Health, Inc. is

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1 a plan sponsor and plan administrator for Defendant Inventiv Health, Inc. Employee
 2 Health Care Program.

3 173. PLAINTIFFS are informed and believe that Defendant Inventiv Health,
 4 Inc. Employee Health Care Program is an ERISA plan and a proper defendant
 5 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

6 174. PLAINTIFFS are informed and believe that Defendant URS
 7 Corporation is a Delaware corporation with its corporate headquarters located in San
 8 Francisco, California. PLAINTIFFS are informed and believe that URS
 9 Corporation is a plan sponsor and plan administrator for Defendant URS
 10 Corporation Welfare Benefits Plan.

11 175. PLAINTIFFS are informed and believe that Defendant URS
 12 Corporation Welfare Benefits Plan is an ERISA plan and a proper defendant
 13 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

14 176. PLAINTIFFS are informed and believe that Defendant Harsco
 15 Corporation is a Delaware corporation with its corporate headquarters located in
 16 Camp Hill, Pennsylvania. PLAINTIFFS are informed and believe that Harsco
 17 Corporation is a plan sponsor and plan administrator for Defendant Harsco
 18 Corporation Insurance Plan.

19 177. PLAINTIFFS are informed and believe that Defendant Harsco
 20 Corporation Insurance Plan is an ERISA plan and a proper defendant pursuant to
 21 ERISA § 502(d), 29 U.S.C. § 1132(d).

22 178. PLAINTIFFS are informed and believe that Defendant Right
 23 Management Consultants, Inc. is a Pennsylvania corporation with its corporate
 24 headquarters located in Philadelphia, Pennsylvania. PLAINTIFFS are informed and
 25 believe that Right Management Consultants, Inc. is a plan sponsor and plan
 26 administrator for an ERISA plan entitled Group Health Benefits Program.

27 179. PLAINTIFFS are informed and believe that Defendant WPP Group
 28 Holdings Corp. is a Delaware corporation with its corporate headquarters located in

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1 New York, New York. PLAINTIFFS are informed and believe that WPP Group
 2 Holdings Corp. is a plan sponsor and plan administrator for Defendant WPP Group
 3 USA Inc. Benefits Plan.

4 180. PLAINTIFFS are informed and believe that Defendant WPP Group
 5 USA Inc. Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA
 6 § 502(d), 29 U.S.C. § 1132(d).

7 181. PLAINTIFFS are informed and believe that Defendant FusionStorm is
 8 a Delaware corporation with its corporate headquarters located in Franklin,
 9 Massachusetts. PLAINTIFFS are informed and believe that FusionStorm is a plan
 10 sponsor and plan administrator for Defendant FusionStorm Health and Welfare
 11 Plan.

12 182. PLAINTIFFS are informed and believe that Defendant FusionStorm
 13 Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to
 14 ERISA § 502(d), 29 U.S.C. § 1132(d).

15 183. PLAINTIFFS are informed and believe that Defendant Owens Corning
 16 is a Delaware corporation with its corporate headquarters located in Toledo, Ohio.
 17 PLAINTIFFS are informed and believe that Owens Corning is a plan sponsor and
 18 plan administrator for Defendant Owens Corning Health Care & Benefits Plan for
 19 Active Employees.

20 184. PLAINTIFFS are informed and believe that Defendant Owens Corning
 21 Health Care & Benefits Plan for Active Employees is an ERISA plan and a proper
 22 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

23 185. PLAINTIFFS are informed and believe that Defendant Graebel
 24 Companies, Inc. is a Delaware corporation with its corporate headquarters located in
 25 Aurora, Colorado. PLAINTIFFS are informed and believe that Graebel Companies,
 26 Inc. is a plan sponsor and plan administrator for Defendant Graebel Companies, Inc.
 27 Health and Welfare Plan.

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1 186. PLAINTIFFS are informed and believe that Defendant Graebel
 2 Companies, Inc. Health and Welfare Plan is an ERISA plan and a proper defendant
 3 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

4 187. PLAINTIFFS are informed and believe that Defendant Intellectual
 5 Ventures Management, LLC is a Washington limited liability company with its
 6 corporate headquarters located in Bellevue, Washington. PLAINTIFFS are
 7 informed and believe that Intellectual Ventures Management, LLC is a plan sponsor
 8 and plan administrator for Defendant Intellectual Ventures Management, LLC
 9 Health and Welfare Plan.

10 188. PLAINTIFFS are informed and believe that Defendant Intellectual
 11 Ventures Management, LLC Health and Welfare Plan is an ERISA plan and a
 12 proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

13 189. PLAINTIFFS are informed and believe that Defendant Encore
 14 Industries, Inc. is an Ohio corporation with its corporate headquarters located in
 15 Sandusky, Ohio. PLAINTIFFS are informed and believe that Encore Industries,
 16 Inc. is a plan sponsor and plan administrator for Defendant Encore Industries Inc.
 17 Employees Welfare Benefit Plan.

18 190. PLAINTIFFS are informed and believe that Defendant Encore
 19 Industries Inc. Employees Welfare Benefit Plan is an ERISA plan and a proper
 20 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

21 191. PLAINTIFFS are informed and believe that Defendant Kforce Inc. is a
 22 Florida corporation with its corporate headquarters located in Tampa, Florida.
 23 PLAINTIFFS are informed and believe that Kforce Inc. is a plan sponsor and plan
 24 administrator for Defendant Kforce Inc. Group Insurance Plan.

25 192. PLAINTIFFS are informed and believe that Defendant Kforce Inc.
 26 Group Insurance Plan is an ERISA plan and a proper defendant pursuant to ERISA
 27 § 502(d), 29 U.S.C. § 1132(d).

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1 193. PLAINTIFFS are informed and believe that Defendant Alcatel-Lucent
 2 USA, Inc. is a Delaware corporation with its corporate headquarters located in
 3 Alpharetta, Georgia. PLAINTIFFS are informed and believe that Alcatel-Lucent
 4 USA, Inc. is a plan sponsor and plan administrator for Defendant Alcatel-Lucent
 5 Medical Expense Plan for Management Employees and for Defendant Alcatel-
 6 Lucent Medical Expense Plan for Occupational Employees.

7 194. PLAINTIFFS are informed and believe that Defendant Alcatel-Lucent
 8 Medical Expense Plan for Management Employees is an ERISA plan and a proper
 9 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

10 195. PLAINTIFFS are informed and believe that Defendant Alcatel-Lucent
 11 Medical Expense Plan for Occupational Employees is an ERISA plan and a proper
 12 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

13 196. PLAINTIFFS are informed and believe that Defendant Amazon
 14 Corporate LLC is a Delaware limited liability company with its corporate
 15 headquarters located in Seattle, Washington. PLAINTIFFS are informed and
 16 believe that Amazon Corporate LLC is a plan sponsor and plan administrator for an
 17 ERISA plan entitled Group Health & Welfare Plan.

18 197. PLAINTIFFS are informed and believe that Defendant Automatic Data
 19 Processing Insurance Agency Inc. is a New Jersey corporation with its corporate
 20 headquarters located in Roseland, New Jersey. PLAINTIFFS are informed and
 21 believe that Automatic Data Processing Insurance Agency Inc. is a plan sponsor and
 22 plan administrator for Defendant Automatic Data Processing, Inc. Flex 2000 Plan.

23 198. PLAINTIFFS are informed and believe that Defendant Automatic Data
 24 Processing, Inc. Flex 2000 Plan is an ERISA plan and a proper defendant pursuant
 25 to ERISA § 502(d), 29 U.S.C. § 1132(d).

26 199. PLAINTIFFS are informed and believe that Defendant Barracuda
 27 Networks, Inc. is a Delaware corporation with its corporate headquarters located in
 28 Campbell, California. PLAINTIFFS are informed and believe that Barracuda

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1 Networks, Inc. is a plan sponsor and plan administrator for Defendant Barracuda
 2 Networks, Inc. Benefit Plan.

3 200. PLAINTIFFS are informed and believe that Defendant Barracuda
 4 Networks, Inc. Benefit Plan is an ERISA plan and a proper defendant pursuant to
 5 ERISA § 502(d), 29 U.S.C. § 1132(d).

6 201. PLAINTIFFS are informed and believe that Defendant Blue Coat
 7 Systems, Inc. is a Delaware corporation with its corporate headquarters located in
 8 Sunnyvale, California. PLAINTIFFS are informed and believe that Blue Coat
 9 Systems, Inc. is a plan sponsor and plan administrator for Defendant Blue Coat
 10 Systems, Inc. Flexible Benefit Plan.

11 202. PLAINTIFFS are informed and believe that Defendant Blue Coat
 12 Systems, Inc. Flexible Benefit Plan is an ERISA plan and a proper defendant
 13 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

14 203. PLAINTIFFS are informed and believe that Defendant Boehringer
 15 Ingelheim Fremont, Inc. is a Delaware corporation with its corporate headquarters
 16 located in Ridgefield, Connecticut. PLAINTIFFS are informed and believe that
 17 Boehringer Ingelheim Fremont, Inc. is a plan sponsor and plan administrator a self-
 18 funded ERISA plan, and is a proper defendant pursuant to ERISA § 502(d), 29
 19 U.S.C. § 1132(d). The Complaint will be amended to allege this ERISA plan's true
 20 name and character when it has been ascertained.

21 204. PLAINTIFFS are informed and believe that Defendant Bonhams &
 22 Butterfields Auctioneers Corporation is a Delaware corporation with its corporate
 23 headquarters located in San Francisco, California. PLAINTIFFS are informed and
 24 believe that Bonhams & Butterfields Auctioneers Corporation is a plan sponsor and
 25 plan administrator for Defendant Butterfields Consolidated Welfare Plan.

26 205. PLAINTIFFS are informed and believe that Defendant Butterfields
 27 Consolidated Welfare Plan is an ERISA plan and a proper defendant pursuant to
 28 ERISA § 502(d), 29 U.S.C. § 1132(d).

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1 206. PLAINTIFFS are informed and believe that Defendant Booz Allen
 2 Hamilton Inc. is a Delaware corporation with its corporate headquarters located in
 3 McLean, Virginia. PLAINTIFFS are informed and believe that Booz Allen
 4 Hamilton Inc. is a plan sponsor and plan administrator for Defendant Booz Allen
 5 Hamilton Inc. All Risk Insurance.

6 207. PLAINTIFFS are informed and believe that Defendant Booz Allen
 7 Hamilton Inc. All Risk Insurance is an ERISA plan and a proper defendant pursuant
 8 to ERISA § 502(d), 29 U.S.C. § 1132(d).

9 208. PLAINTIFFS are informed and believe that Defendant Cadence Design
 10 Systems, Inc. is a Delaware corporation with its corporate headquarters located in
 11 San Jose, California. PLAINTIFFS are informed and believe that Cadence Design
 12 Systems, Inc. is a plan sponsor and plan administrator for Defendant Cadence Group
 13 Life, Health and Disability Plan.

14 209. PLAINTIFFS are informed and believe that Defendant Cadence Group
 15 Life, Health and Disability Plan is an ERISA plan and a proper defendant pursuant
 16 to ERISA § 502(d), 29 U.S.C. § 1132(d).

17 210. PLAINTIFFS are informed and believe that Defendant Canon
 18 ANELVA Corporation is a Japan corporation with its corporate headquarters located
 19 in San Jose, California. PLAINTIFFS are informed and believe that Canon
 20 ANELVA Corporation is a plan sponsor and plan administrator a self-funded
 21 ERISA plan, and is a proper defendant pursuant to ERISA § 502(d), 29 U.S.C.
 22 § 1132(d). The Complaint will be amended to allege this ERISA plan's true name
 23 and character when it has been ascertained.

24 211. PLAINTIFFS are informed and believe that Defendant Chipotle
 25 Mexican Grill, Inc. is a Delaware corporation with its corporate headquarters
 26 located in Denver, Colorado. PLAINTIFFS are informed and believe that Chipotle
 27 Mexican Grill, Inc. is a plan sponsor and plan administrator for Defendant Chipotle
 28 Mexican Grill Inc. Flexible Benefits Plan.

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1 212. PLAINTIFFS are informed and believe that Defendant Chipotle
 2 Mexican Grill Inc. Flexible Benefits Plan is an ERISA plan and a proper defendant
 3 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

4 213. PLAINTIFFS are informed and believe that Defendant Coach, Inc. is a
 5 Maryland corporation with its corporate headquarters located in New York, New
 6 York. PLAINTIFFS are informed and believe that Coach, Inc. is a plan sponsor and
 7 plan administrator for Defendant Coach, Inc. Welfare Benefit Plan.

8 214. PLAINTIFFS are informed and believe that Defendant Coach, Inc.
 9 Welfare Benefit Plan is an ERISA plan and a proper defendant pursuant to ERISA
 10 § 502(d), 29 U.S.C. § 1132(d).

11 215. PLAINTIFFS are informed and believe that Defendant Cognizant
 12 Technology Solutions U.S. Corporation is a Delaware corporation with its corporate
 13 headquarters located in College Station, Texas. PLAINTIFFS are informed and
 14 believe that Cognizant Technology Solutions U.S. Corporation is a plan sponsor and
 15 plan administrator for Defendant Cognizant Health & Welfare Benefit Plan.

16 216. PLAINTIFFS are informed and believe that Defendant Cognizant
 17 Health & Welfare Benefit Plan is an ERISA plan and a proper defendant pursuant to
 18 ERISA § 502(d), 29 U.S.C. § 1132(d).

19 217. PLAINTIFFS are informed and believe that Defendant CorVel
 20 Corporation is a Delaware corporation with its corporate headquarters located in
 21 Irvine, California. PLAINTIFFS are informed and believe that CorVel Corporation
 22 is a plan sponsor and plan administrator for Defendant CorVel Corporation Welfare
 23 Benefits Plan.

24 218. PLAINTIFFS are informed and believe that Defendant CorVel
 25 Corporation Welfare Benefits Plan is an ERISA plan and a proper defendant
 26 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

27 219. PLAINTIFFS are informed and believe that Defendant Diageo North
 28 America, Inc. is a Connecticut corporation with its corporate headquarters located in

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1 Norwalk, Connecticut. PLAINTIFFS are informed and believe that Diageo North
 2 America, Inc. is a plan sponsor and plan administrator for an ERISA plan entitled
 3 Medical Care and Life Insurance Plan for Salaried and Retired.

4 220. PLAINTIFFS are informed and believe that Defendant Duran &
 5 Venables, Inc. is a California corporation with its corporate headquarters located in
 6 Milpitas, California. PLAINTIFFS are informed and believe that Duran &
 7 Venables, Inc. is a plan sponsor and plan administrator a self-funded ERISA plan,
 8 and is a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The
 9 Complaint will be amended to allege this ERISA plan's true name and character
 10 when it has been ascertained.

11 221. PLAINTIFFS are informed and believe that Defendant Dynamic
 12 Details Design, LLC is a Delaware limited liability company with its corporate
 13 headquarters located in Anaheim, California. PLAINTIFFS are informed and
 14 believe that Dynamic Details Design, LLC is a plan sponsor and plan administrator
 15 for Defendant Dynamic Details, Inc. Welfare Benefit Plan.

16 222. PLAINTIFFS are informed and believe that Defendant Dynamic
 17 Details, Inc. Welfare Benefit Plan is an ERISA plan and a proper defendant pursuant
 18 to ERISA § 502(d), 29 U.S.C. § 1132(d).

19 223. PLAINTIFFS are informed and believe that Defendant Emulex
 20 Corporation is a California corporation with its corporate headquarters located in
 21 Costa Mesa, California. PLAINTIFFS are informed and believe that Emulex
 22 Corporation is a plan sponsor and plan administrator for Defendant Emuflex—The
 23 Flexible Benefits Program for Emulex Employees.

24 224. PLAINTIFFS are informed and believe that Defendant Emuflex—The
 25 Flexible Benefits Program for Emulex Employees is an ERISA plan and a proper
 26 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

27 225. PLAINTIFFS are informed and believe that Defendant Ericsson
 28 Television Inc. is a Delaware corporation with its corporate headquarters located in

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1 Plano, Texas. PLAINTIFFS are informed and believe that Ericsson Television Inc.
 2 is a plan sponsor and plan administrator for Defendant Ericsson Television Inc.
 3 Employee Benefit Package.

4 226. PLAINTIFFS are informed and believe that Defendant Ericsson
 5 Television Inc. Employee Benefit Package is an ERISA plan and a proper defendant
 6 pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

7 227. PLAINTIFFS are informed and believe that Defendant
 8 GlaxoSmithKline LLC is a Delaware limited liability company with its corporate
 9 headquarters located in Philadelphia, Pennsylvania. PLAINTIFFS are informed and
 10 believe that GlaxoSmithKline LLC is a plan sponsor and plan administrator for
 11 Defendant GlaxoSmithKline Health and Welfare Benefits Plan for US Employees.

12 228. PLAINTIFFS are informed and believe that Defendant
 13 GlaxoSmithKline Health and Welfare Benefits Plan for US Employees is an ERISA
 14 plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

15 229. PLAINTIFFS are informed and believe that HGST, Inc. is a Delaware
 16 corporation with its corporate headquarters located in Irvine, California.
 17 PLAINTIFFS are informed and believe that HGST, Inc. is a plan sponsor and plan
 18 administrator for Defendant Hitachi Global Storage Technologies, Inc. Welfare
 19 Benefit Plan.

20 230. PLAINTIFFS are informed and believe that Defendant Hitachi Global
 21 Storage Technologies, Inc. Welfare Benefit Plan is an ERISA plan and a proper
 22 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

23 231. PLAINTIFFS are informed and believe that Defendant Infotech
 24 Enterprises America, Inc. is a California corporation with its corporate headquarters
 25 located in East Hartford, Connecticut. PLAINTIFFS are informed and believe that
 26 Infotech Enterprises America, Inc. is a plan sponsor and plan administrator for
 27 Defendant Infotech Enterprises America, Inc. Medical and Dental Plan.
 28

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232. PLAINTIFFS are informed and believe that Defendant Infotech Enterprises America, Inc. Medical and Dental Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

233. PLAINTIFFS are informed and believe that Defendant J. Crew Group, Inc. is a Delaware corporation with its corporate headquarters located in Albany, New York. PLAINTIFFS are informed and believe that J. Crew Group, Inc. is a plan sponsor and plan administrator for Defendant Group Ins. Plan for Associates of J. Crew Group, Inc.

234. PLAINTIFFS are informed and believe that Defendant Group Ins. Plan for Associates of J. Crew Group, Inc. is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

235. PLAINTIFFS are informed and believe that Defendant L-3 Communications Corporation is a Delaware corporation with its corporate headquarters located in New York, New York. PLAINTIFFS are informed and believe that L-3 Communications Corporation is a plan sponsor and plan administrator for Defendant L-3 Communications Funded Group Health and Welfare Plan.

236. PLAINTIFFS are informed and believe that Defendant L-3 Communications Funded Group Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

237. PLAINTIFFS are informed and believe that Defendant Lehigh Hanson, Inc. is a Delaware corporation with its corporate headquarters located in Irving, Texas. PLAINTIFFS are informed and believe that Lehigh Hanson, Inc. is a plan sponsor and plan administrator for Defendant Lehigh Hanson Inc. Health & Welfare Plan Active Employees.

238. PLAINTIFFS are informed and believe that Defendant Lehigh Hanson Inc. Health & Welfare Plan Active Employees is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

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239. PLAINTIFFS are informed and believe that Defendant Microsemi Corporation is a Delaware corporation with its corporate headquarters located in Aliso Viejo, California. PLAINTIFFS are informed and believe that Microsemi Corporation is a plan sponsor and plan administrator for Defendant Microsemi Group Benefits Plan.

240. PLAINTIFFS are informed and believe that Defendant Microsemi Group Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

241. PLAINTIFFS are informed and believe that Defendant Natus Medical Incorporated is a Delaware corporation with its corporate headquarters located in San Carlos, California. PLAINTIFFS are informed and believe that Natus Medical Incorporated is a plan sponsor and plan administrator for Defendant Natus Medical Health and Welfare Plan.

242. PLAINTIFFS are informed and believe that Defendant Natus Medical Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

243. PLAINTIFFS are informed and believe that Northwestern Polytechnic University is a California corporation with its corporate headquarters located in Fremont, California. PLAINTIFFS are informed and believe that Northwestern Polytechnic University is a plan sponsor and plan administrator a self-funded ERISA plan, and is a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint will be amended to allege this ERISA plan's true name and character when it has been ascertained.

244. PLAINTIFFS are informed and believe that Defendant Oasis Outsourcing Holdings, Inc. is a Florida corporation with its corporate headquarters located in West Palm Beach, Florida. PLAINTIFFS are informed and believe that Oasis Outsourcing Holdings, Inc. is a plan sponsor and plan administrator for Defendant Oasis Outsourcing Inc. Employee Welfare Benefits Plan.

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245. PLAINTIFFS are informed and believe that Defendant Oasis Outsourcing Inc. Employee Welfare Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

246. PLAINTIFFS are informed and believe that Defendant Opticomp Corporation is a California corporation with its corporate headquarters located in Zephyr Cove, Nevada. PLAINTIFFS are informed and believe that Opticomp Corporation is a plan sponsor and plan administrator a self-funded ERISA plan, and is a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint will be amended to allege this ERISA plan's true name and character when it has been ascertained.

247. PLAINTIFFS are informed and believe that Defendant Paychex, Inc. is a Delaware corporation with its corporate headquarters located in Rochester, New York. PLAINTIFFS are informed and believe that Paychex, Inc. is a plan sponsor and plan administrator for Defendant Paychex, Inc. Employee Health Benefits Plan.

248. PLAINTIFFS are informed and believe that Defendant Paychex, Inc. Employee Health Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

249. PLAINTIFFS are informed and believe that Defendant Pole to Win America, Inc. is a California corporation with its corporate headquarters located in Santa Clara, California. PLAINTIFFS are informed and believe that Pole to Win America, Inc. is a plan sponsor and plan administrator a self-funded ERISA plan, and is a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint will be amended to allege this ERISA plan's true name and character when it has been ascertained.

250. PLAINTIFFS are informed and believe that Defendant PVH Corp. is a Delaware corporation with its corporate headquarters located in New York, New York. PLAINTIFFS are informed and believe that PVH Corp. is a plan sponsor and plan administrator for Defendant PVH Corp. & Subsidiaries Health & Welfare Plan.

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251. PLAINTIFFS are informed and believe that Defendant PVH Corp. & Subsidiaries Health & Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

252. PLAINTIFFS are informed and believe that Defendant Science Applications International Corporation is a Delaware corporation with its corporate headquarters located in McLean, Virginia. PLAINTIFFS are informed and believe that Science Applications International Corporation is a plan sponsor and plan administrator for Defendant Science Applications International Corporation Welfare Benefits Trust and for Defendant SAIC Employee Health and Welfare Benefits Plan.

253. PLAINTIFFS are informed and believe that Defendant Science Applications International Corporation Welfare Benefits Trust is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

254. PLAINTIFFS are informed and believe that Defendant SAIC Employee Health and Welfare Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

255. PLAINTIFFS are informed and believe that Defendant Semtech Corporation is a Delaware corporation with its corporate headquarters located in Camarillo, California. PLAINTIFFS are informed and believe that Semtech Corporation is a plan sponsor and plan administrator for Defendant Semtech Corp Group Medical and Dental Plan.

256. PLAINTIFFS are informed and believe that Defendant Semtech Corp Group Medical and Dental Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

257. PLAINTIFFS are informed and believe that Defendant SPX Corporation is a Delaware corporation with its corporate headquarters located in Charlotte, North Carolina. PLAINTIFFS are informed and believe that SPX

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1 Corporation is a plan sponsor for Defendant SPX Corporation Comprehensive
 2 Medical Care Plan.

3 258. PLAINTIFFS are informed and believe that Defendant Administrative
 4 Committee SPX Corporation is a plan administrator for Defendant SPX Corporation
 5 Comprehensive Medical Care Plan.

6 259. PLAINTIFFS are informed and believe that Defendant SPX
 7 Corporation Comprehensive Medical Care Plan is an ERISA plan and a proper
 8 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

9 260. PLAINTIFFS are informed and believe that Defendant R. Steven
 10 Peters, Inc. is a California corporation with its corporate headquarters located in
 11 Tustin, California. PLAINTIFFS are informed and believe that R. Steven Peters,
 12 Inc. is a plan sponsor and plan administrator a self-funded ERISA plan, and is a
 13 proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint
 14 will be amended to allege this ERISA plan's true name and character when it has
 15 been ascertained.

16 261. PLAINTIFFS are informed and believe that Defendant TE
 17 Connectivity Networks, Inc. is a Delaware corporation with its corporate
 18 headquarters located in Berwyn, Pennsylvania. PLAINTIFFS are informed and
 19 believe that TE Connectivity Networks, Inc. is a plan sponsor and plan administrator
 20 a self-funded ERISA plan, and is a proper defendant pursuant to ERISA § 502(d),
 21 29 U.S.C. § 1132(d). The Complaint will be amended to allege this ERISA plan's
 22 true name and character when it has been ascertained.

23 262. PLAINTIFFS are informed and believe that Defendant Telenav, Inc. is
 24 a Delaware corporation with its corporate headquarters located in Sunnyvale,
 25 California. PLAINTIFFS are informed and believe that Telenav, Inc. is a plan
 26 sponsor and plan administrator for Defendant Telenav Health and Welfare Plan.

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263. PLAINTIFFS are informed and believe that Defendant Telenav Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

264. PLAINTIFFS are informed and believe that Defendant Trident Microsystems, Inc. is a California corporation with its corporate headquarters located in Mountain View, California. PLAINTIFFS are informed and believe that Natus Medical Incorporated is a plan sponsor and plan administrator for Defendant Trident Microsystems, Inc. Health and Welfare Benefit Plan.

265. PLAINTIFFS are informed and believe that Defendant Trident Microsystems, Inc. Health and Welfare Benefit Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

266. PLAINTIFFS are informed and believe that Defendant The Kleinfelder Group, Inc. is a California corporation with its corporate headquarters located in San Diego, California. PLAINTIFFS are informed and believe that The Kleinfelder Group, Inc. is a plan sponsor and plan administrator for Defendant The Kleinfelder Group, Inc. Health and Welfare Plan.

267. PLAINTIFFS are informed and believe that Defendant The Kleinfelder Group, Inc. Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

268. PLAINTIFFS are informed and believe that Defendant Tolt LLC is a Delaware limited liability company with its corporate headquarters located in Charlotte, North Carolina. PLAINTIFFS are informed and believe that Tolt LLC is a plan sponsor for Defendant Tolt Technologies Benefit Welfare Plan.

269. PLAINTIFFS are informed and believe that Defendant Tolt Service Group is a plan administrator for Defendant Tolt Technologies Benefit Welfare Plan.

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270. PLAINTIFFS are informed and believe that Defendant Tolt Technologies Benefit Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

271. PLAINTIFFS are informed and believe that Defendant Toyota Motor Sales U.S.A., Inc. is a California corporation with its corporate headquarters located in Torrance, California. PLAINTIFFS are informed and believe that Toyota Motor Sales U.S.A., Inc. is a plan sponsor and plan administrator for an ERISA plan entitled Group Insurance Medical Dental Plan.

272. PLAINTIFFS are informed and believe that Defendant Tween Brands, Inc. is a Delaware corporation with its corporate headquarters located in New Albany, Ohio. PLAINTIFFS are informed and believe that Tween Brands, Inc. is a plan sponsor and plan administrator for Defendant Tween Brands, Inc. Comprehensive Welfare Benefits Plan.

273. PLAINTIFFS are informed and believe that Defendant Tween Brands, Inc. Comprehensive Welfare Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

274. PLAINTIFFS are informed and believe that Defendant UBS Financial Services Inc. is a Delaware corporation with its corporate headquarters located in Weehawken, New Jersey. PLAINTIFFS are informed and believe that UBS Financial Services Inc. is a plan sponsor for Defendant UBS Financial Services Inc. Group Health and Welfare Benefits Plan.

275. PLAINTIFFS are informed and believe that Defendant Louis Dimaria, c/o UBS Financial Services Inc., is a plan administrator for Defendant UBS Financial Services Inc. Group Health and Welfare Benefits Plan.

276. PLAINTIFFS are informed and believe that Defendant UBS Financial Services Inc. Group Health and Welfare Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

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277. PLAINTIFFS are informed and believe that Defendant Unisource Worldwide, Inc. is a Delaware corporation with its corporate headquarters located in Norcross, Georgia. PLAINTIFFS are informed and believe that Unisource Worldwide, Inc. is a plan sponsor and plan administrator for an ERISA plan entitled Health and Welfare Benefits Plan for Salaried and Hourly Non-Union Employees.

278. PLAINTIFFS are informed and believe that Defendant Vitesse Semiconductor Corporation is a Delaware corporation with its corporate headquarters located in Camarillo, California. PLAINTIFFS are informed and believe that Vitesse Semiconductor Corporation is a plan sponsor and plan administrator a self-funded ERISA plan, and is a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint will be amended to allege this ERISA plan's true name and character when it has been ascertained.

279. PLAINTIFFS are informed and believe that Defendant VWR International, LLC is a Delaware limited liability company with its corporate headquarters located in Radnor, Pennsylvania. PLAINTIFFS are informed and believe that VWR International, LLC is a plan sponsor and plan administrator for Defendant VWR International, LLC Welfare Benefit Plan.

280. PLAINTIFFS are informed and believe that Defendant VWR International, LLC Welfare Benefit Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

281. PLAINTIFFS are informed and believe that Defendant WPG Americas Inc. is a California corporation with its corporate headquarters located in San Jose, California. PLAINTIFFS are informed and believe that WPG Americas Inc. is a plan sponsor and plan administrator for Defendant WPG Americas Health and Welfare Plan.

282. PLAINTIFFS are informed and believe that Defendant WPG Americas Health and Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

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283. PLAINTIFFS are informed and believe that Defendant Wycliffe Bible Translators, Inc. is a California corporation with its corporate headquarters located in Orlando, Florida. PLAINTIFFS are informed and believe that Wycliffe Bible Translators, Inc. is a plan sponsor and plan administrator for Defendant Wycliffe Bible Translators, Inc. – Medical Health Plan HMO and for Defendant Wycliffe Bible Translators, Inc. Group Life Insurance.

284. PLAINTIFFS are informed and believe that Defendant Wycliffe Bible Translators, Inc. – Medical Health Plan HMO is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

285. PLAINTIFFS are informed and believe that Defendant Wycliffe Bible Translators, Inc. Group Life Insurance is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

286. PLAINTIFFS are informed and believe that Defendant Al-Razaq Enterprises Group Incorporated is a Texas corporation with its corporate headquarters located in Houston, Texas. PLAINTIFFS are informed and believe that Al-Razaq Enterprises Group Incorporated is a plan sponsor and plan administrator a self-funded ERISA plan, and is a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint will be amended to allege this ERISA plan's true name and character when it has been ascertained.

287. PLAINTIFFS are informed and believe that Defendant Cordevalle, L.P. is a California limited partnership with its corporate headquarters located in San Martin, California. PLAINTIFFS are informed and believe that Cordevalle, L.P. is a plan sponsor and plan administrator for Defendant Cordevalle Welfare Benefits Plan.

288. PLAINTIFFS are informed and believe that Defendant Cordevalle Welfare Benefits Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

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1 289. PLAINTIFFS are informed and believe that Defendant First American
 2 Financial Corporation is a Delaware corporation with its corporate headquarters
 3 located in Santa Ana, California. PLAINTIFFS are informed and believe that First
 4 American Financial Corporation is a plan sponsor and plan administrator for
 5 Defendant the First American Financial Corporation Group Life, Medical Dental,
 6 Disability Benefits Trust.

7 290. PLAINTIFFS are informed and believe that Defendant the First
 8 American Financial Corporation Group Life, Medical Dental, Disability Benefits
 9 Trust is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29
 10 U.S.C. § 1132(d).

11 291. PLAINTIFFS are informed and believe that Defendant K. R. Anderson,
 12 Inc. is a California corporation with its corporate headquarters located in Morgan
 13 Hill, California. PLAINTIFFS are informed and believe that K. R. Anderson, Inc. is
 14 a plan sponsor and plan administrator for Defendant K.R. Anderson Group Welfare
 15 Plan.

16 292. PLAINTIFFS are informed and believe that Defendant K.R. Anderson
 17 Group Welfare Plan is an ERISA plan and a proper defendant pursuant to ERISA
 18 § 502(d), 29 U.S.C. § 1132(d).

19 293. PLAINTIFFS are informed and believe that Defendant LVI Services
 20 Inc. is a Delaware corporation with its corporate headquarters located in Trumbull,
 21 Connecticut. PLAINTIFFS are informed and believe that LVI Services Inc. is a
 22 plan sponsor and plan administrator for Defendant LVI Services Inc. Health Benefit
 23 Plan.

24 294. PLAINTIFFS are informed and believe that Defendant LVI Services
 25 Inc. Health Benefit Plan is an ERISA plan and a proper defendant pursuant to
 26 ERISA § 502(d), 29 U.S.C. § 1132(d).

27 295. PLAINTIFFS are informed and believe that Defendant Praxair, Inc. is a
 28 Delaware corporation with its corporate headquarters located in Dansbury,

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1 Connecticut. PLAINTIFFS are informed and believe that Praxair, Inc. is a plan
 2 sponsor and plan administrator for Defendant Praxair Medical Plan.

3 296. PLAINTIFFS are informed and believe that Defendant Praxair Medical
 4 Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29
 5 U.S.C. § 1132(d).

6 297. PLAINTIFFS are informed and believe that Defendant SCI
 7 Management, LLC is a Minnesota limited liability company with its corporate
 8 headquarters located in Waite Park, Minnesota. PLAINTIFFS are informed and
 9 believe that Defendant SCI Management, LLC is a plan sponsor and plan
 10 administrator a self-funded ERISA plan, and is a proper defendant pursuant to
 11 ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint will be amended to allege
 12 this ERISA plan's true name and character when it has been ascertained.

13 298. PLAINTIFFS are informed and believe that Defendant Zetta, Inc.,
 14 d/b/a/ Delaware Zetta, is a Delaware corporation with its corporate headquarters
 15 located in Sunnyvale, California. PLAINTIFFS are informed and believe that Zetta,
 16 Inc. is a plan sponsor and plan administrator a self-funded ERISA plan, and is a
 17 proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint
 18 will be amended to allege this ERISA plan's true name and character when it has
 19 been ascertained.

20 299. PLAINTIFFS are informed and believe that Defendant Luminex
 21 Corporation is a Delaware corporation with its corporate headquarters located in
 22 Austin, Texas. PLAINTIFFS are informed and believe that Luminex Corporation is
 23 a plan sponsor and plan administrator of a self-funded ERISA plan, and is a proper
 24 defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint will be
 25 amended to allege this ERISA plan's true name and character when it has been
 26 ascertained.

27 300. PLAINTIFFS are informed and believe that Defendant Hathaway
 28 Dinwiddie Construction Company is a California corporation with its corporate

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headquarters located in San Francisco, California. PLAINTIFFS are informed and believe that Hathaway Dinwiddie Construction Company is a plan sponsor and plan administrator for Defendant Hathaway Dinwiddie Group Medical and Dental Plan.

301. PLAINTIFFS are informed and believe that Defendant Hathaway Dinwiddie Group Medical and Dental Plan is an ERISA plan and a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d).

302. PLAINTIFFS are informed and believe that Defendant Saudi Arabian Cultural Mission is a part of the Royal Embassy of Saudi Arabia, located in Fairfax, Virginia. PLAINTIFFS are informed and believe that Saudi Arabian Cultural Mission is a plan sponsor and plan administrator a self-funded ERISA plan, and is a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint will be amended to allege this ERISA plan's true name and character when it has been ascertained.

303. PLAINTIFFS are informed and believe that Defendant Farmers Insurance Company, Inc. is a Kansas corporation with its corporate headquarters located in Grand Rapids, Michigan. PLAINTIFFS are informed and believe that Farmers Insurance Company, Inc. is a plan sponsor and plan administrator a self-funded ERISA plan, and is a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint will be amended to allege this ERISA plan's true name and character when it has been ascertained.

304. PLAINTIFFS are informed and believe that Defendant United States Department of Defense is an agency of the government of the United States of America, located in Washington, D.C. PLAINTIFFS are informed and believe that United States Department of Defense is a plan sponsor and plan administrator a self-funded ERISA plan, and is a proper defendant pursuant to ERISA § 502(d), 29 U.S.C. § 1132(d). The Complaint will be amended to allege this ERISA plan's true name and character when it has been ascertained.

1 305. The employers who sponsor the ERISA Plans, the Administrators of
2 the ERISA Plans, and the ERISA Plans will be referred to herein as the “ERISA
3 Plan Defendants.

4 306. PLAINTIFFS are informed and believe that Defendant Farmers
5 Insurance Company, Inc. is a Kansas corporation with its corporate headquarters
6 located in Grand Rapids, Michigan. PLAINTIFFS are informed and believe that
7 Farmers Insurance Company, Inc. is a plan sponsor and plan administrator a self-
8 funded ERISA plan, and is a proper defendant pursuant to ERISA § 502(d), 29
9 U.S.C. § 1132(d). The Complaint will be amended to allege this ERISA plan’s true
10 name and character when it has been ascertained.

11 **D. DOE DEFENDANTS**

12 307. The true names and capacities of the defendants sued herein as DOES
13 are unknown to Plaintiffs at this time, and Plaintiffs therefore sue such defendants
14 by such fictitious names. Plaintiffs are informed and believe that the DOES are
15 those individuals, corporations and/or businesses or other entities that are also in
16 some fashion legally responsible for the actions, events and circumstances
17 complained of herein, were the agents, representatives, or employees of the other
18 defendants, and may be financially responsible to Plaintiffs for the services they
19 have provided, as alleged herein. The Complaint will be amended to allege the
20 DOES’ true names and capacities when they have been ascertained.

21 308. Aetna, the ERISA Plan Defendants and the DOES are collectively
22 referred to herein as the “Defendants.”

23 **E. AGENCY**

24 309. PLAINTIFFS are informed and believe that Aetna has entered into
25 administrative service agreements or other contracts with the ERISA Plan
26 Defendants whereby Aetna has agreed to act as the agent of the ERISA Plan
27 Defendants, and has actual or ostensible authority to act on their behalf for:
28 providing plan documents to plan members; communicating with plan members and

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1 healthcare providers, such as PLAINTIFFS; verifying member benefits and
 2 eligibility to providers, such as PLAINTIFFS; interpreting plan terms and
 3 provisions; receiving PLAINTIFFS' claims; pricing PLAINTIFFS' claims;
 4 processing and administering PLAINTIFFS' claims and appeals; approving or
 5 denying PLAINTIFFS' claims and appeals; interpreting ERISA plan documents;
 6 determining whether and how to pay PLAINTIFFS' claims; issuing remittance
 7 advices, claim status reports and explanations of benefits; and making and
 8 administering payments. With respect to every claim at issue in this case,
 9 PLAINTIFFS dealt directly with Aetna, submitted the claims for reimbursement to
 10 Aetna, communicated about the claims with Aetna, and in many cases received
 11 payments from Aetna.

12 310. PLAINTIFFS are informed and believe that, as the appointed agents of
 13 the ERISA Plan Defendants, Aetna is in possession of all facts, information and data
 14 concerning and related to the authorization, processing, determination, pricing,
 15 payment, and appeals of all claims submitted by PLAINTIFFS with respect to the
 16 benefit plans.

17 **F. ASSIGNMENT AND STANDING**

18 311. As a condition of the provision of services by PLAINTIFFS, each
 19 patient signs an agreement assigning his or her health insurance benefits to
 20 PLAINTIFFS. Each assignment of benefits provides for PLAINTIFFS to be paid
 21 directly for the services provided to the patient.

22 312. PLAINTIFFS received an assignment of benefits for every claim at
 23 issue in this litigation. PLAINTIFFS' standard assignment of benefits reads as
 24 follows:

25 I, the undersigned, certify that I (or my dependent) have insurance with the
 26 above listed carriers, and assign directly to Bay Area Surgical Group, Inc.
 ("BASG")¹ all insurance benefits, if any, otherwise payable to me for services

27 ¹ Knowles Surgery Center, National Ambulatory Surgery Center, Los Altos Surgery
 28 Center and Forest Surgery Center have similar assignment of benefits.

1 rendered. I understand that I am financially responsible for all charges
 2 whether or not paid by the insurance carrier(s). I hereby authorize the doctor
 3 and facility to release all information necessary to secure payment of benefits.
 4 In addition, I understand that insurance payments made directly to the patient
 5 or subscriber for services provided by BASG must be reimbursed to BASG in
 6 the form of a check made payable to Bay Area Surgical Group. I authorize
 7 the use of this signature on all insurance submissions.

8 313. For every claim at issue in this litigation, Defendants acknowledged
 9 and consented to the assignment of benefits, and/or waived any objections to or
 10 limitations on the assignment of benefits and the members' right to assign the
 11 benefits, by, *inter alia*, receiving and processing PLAINTIFFS' claims, and making
 12 and administering payments directly to PLAINTIFFS on such claims.

13 314. PLAINTIFFS have standing to pursue the claims for relief in this
 14 Complaint as an assignee of the members' benefits under the plans, as a party who
 15 has suffered injury in fact and lost money and/or property as a result of the
 16 Defendants' conduct, and as a party who rendered services to the members with the
 17 knowledge of and at the request of the Defendants and was not appropriately
 18 compensated for the fair market value of those services.

19 315. In *Misic v. Building Services Employees Health & Welfare Trust*, 789
 20 F.2d 1374, 1379 (9th Cir. 1986), the Ninth Circuit determined that a provider who is
 21 "an assignee of [ERISA plan] beneficiaries pursuant to assignments valid under
 22 ERISA, has standing to assert the claims of his assignors" against their health plan.
 23 Similarly, in *In re WellPoint, Inc. Out-of-Network "UCR" Rates Litigation*, 865 F.
 24 Supp. 2d 1002 (C.D. Cal. Aug. 11, 2011), the court emphasized that "[a] health
 25 care provider with an allegedly valid assignment [of benefits] has the same standing
 26 [as the beneficiary]' and may bring suit under ERISA." *Id.* at 1042 (quoting
 27 *Davidowitz v. Delta Dental Plan, Inc.*, 946 F.2d 1476, 1477 (9th Cir. 1991) (some
 28 alteration in original)).

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1 **II. GENERAL ALLEGATIONS**

2 **A. Services Provided by PLAINTIFFS to Defendants' Members and**
 3 **the Nature of the Plans**

4 316. PLAINTIFFS are, and at all times relevant to this litigation, were
 5 operating ambulatory surgery centers ("ASCs") that provides medically necessary
 6 health care services related to medical and surgical procedures performed at their
 7 facilities. At all relevant times relevant to this litigation, PLAINTIFFS were not
 8 contracted with any of the Defendants, nor "participated" in any of their provider
 9 networks. Thus, PLAINTIFFS are what is known as a "non-contracted" or "out-of-
 10 network" provider with respect to Defendants.

11 317. At all relevant times herein, PLAINTIFFS have provided health care
 12 services to patients who, at the time PLAINTIFFS provided the services, were
 13 members of health benefit plans for which Aetna exercised administrative
 14 responsibilities (such patients shall hereinafter be referred to as "members").

15 318. Individuals and families that receive their health insurance through a
 16 private employer-sponsored health benefit plan are typically participants or
 17 beneficiaries of plans governed by the ERISA. Individuals and families who do not
 18 receive employer-sponsored health insurance often purchase health insurance
 19 policies directly from Aetna.

20 319. PLAINTIFFS are informed and believe that the health benefit plans at
 21 issue in this matter are governed by ERISA.

22 320. PLAINTIFFS are informed and believe that all of the ERISA Plan
 23 Defendants at issue permitted their members to obtain medical and surgical services
 24 at out-of-network providers, such as PLAINTIFFS.

25 321. On or about the time that PLAINTIFFS provided the health care
 26 services to each of the members, PLAINTIFFS obtained a written assignment of
 27 each member's benefits under the ERISA Plan Defendants.
 28

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B. Aetna's Role and Responsibilities With Respect To Claims

322. Aetna is one of the nation's largest health insurers. It underwrites and issues thousands of health insurance plans.

323. When individuals and families who do not receive employer-sponsored health insurance purchase health insurance policies directly from Aetna, Aetna typically has sole responsibility and discretion to administer and pay claims submitted under such policies.

324. Aetna also contracts with other entities that provide health benefit plans – such as private employer-sponsored benefit plans, government-sponsored plans, welfare trusts and other sources – in order to provide administrative services.

325. The administrative responsibilities assumed and exercised by Aetna include, but are not limited to, providing plan members with plan documents, providing access to a network of contracted providers, communicating with plan members and health care providers, such as PLAINTIFFS, interpreting and applying plan terms and provisions, making coverage and benefits decisions, processing and adjudicating benefit claims with respect to health care services provided by both contracted (*i.e.*, “in-network”) and non-contracted (*i.e.*, “out-of-network”) providers, pricing such benefit claims, making and administering payments with respect to such benefit claims, processing and adjudicating appeals of such benefit determinations, functioning as the plans’ “Claims Administrator,” functioning as the plans’ “Plan Administrator,” functioning as the Plan Administrator’s “designee,” functioning as the plans’ *de facto* Plan Administrator, functioning as a co-Plan Administrator, and/or other administrative functions.

326. PLAINTIFFS are informed and believe that for the ERISA Plan Defendants, the plan typically will enter into an “administrative service agreement” with Aetna to perform certain administrative responsibilities, such as those set forth above. The administrative services agreements appoint Aetna as a Claims Administrator and a fiduciary, and delegate to Aetna authority, responsibility and

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discretion to administer claims and make final benefits decisions, based on claim procedures and standards that Aetna develops, and in accordance with the plan terms and conditions as interpreted by Aetna. PLAINTIFFS are informed and believe that Aetna collects administrative services fees from the ERISA Plan Defendants for performing the administrative functions. PLAINTIFFS are also informed and believes that the ERISA Plan Defendants were fully aware that Aetna was supposed to interpret plan documents, authorize services, and price claims for reimbursement on their behalf.

327. PLAINTIFFS are informed and believe that with respect to certain the ERISA Plan Defendants, Aetna is designated not just as a Claims Administrator, but also as the Plan Administrator for ERISA purposes. With respect to those ERISA Plan Defendants that do not specifically designate a Plan Administrator for ERISA purposes, PLAINTIFFS are informed and believe that Aetna has functioned as the *de facto* Plan Administrator. With respect to those ERISA Plan Defendants, PLAINTIFFS are informed and believe that Aetna has functioned as the designee of the designated Plan Administrator and/or as the co-Plan Administrator. In each case, Aetna functions as a Plan Administrator insofar as it exercised a delegated authority to provide plan documents to participants, receive benefit claims, evaluate and process benefit claims, review and interpret the terms of the plan, make benefit determinations, make and administer benefit payments, adjudicate appeals of benefit determinations, and serve as the primary point of contact for members and providers to communicate regarding benefits and benefit determinations. In carrying out these Plan Administrator functions, Aetna possessed authority and fiduciary discretion to manage and administer the ERISA Plan Defendants, effectively controls the decision whether to honor or deny a claim, exercises authority over the resolution of benefit claims, and/or has responsibility to pay the claims.

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C. UCR Reimbursement To Out-Of-Network Ambulatory Surgery Centers

328. Under some health benefit plans, such as Health Maintenance Organizations (“HMOs”), member benefits are restricted to services provided by in-network providers (except in emergency and other limited circumstances).

329. In contrast, many health benefit plans, such as Preferred Provider Organizations (“PPOs”), indemnity plans and others, permit their members to access health care providers who are outside the contracted network. Plans which offer coverage for such out-of-network services, including the services of ASCs, are marketed to prospective members as benefiting them with the freedom and flexibility to choose the health care provider of their choice, including out-of-network providers. PLAINTIFFS are informed and believe that these plans charge members a higher premium or contribution in exchange for this purported freedom of choice.

330. PLAINTIFFS are informed and believe that the ERISA Plan Defendants involved in this litigation typically provide that the member has the freedom to choose in-network or out-of-network providers, and that covered services provided by out-of-network providers will be eligible for reimbursement pursuant to the out-of-network benefit provisions of the plan. The ERISA Plan Defendants also typically provide that in-network providers have agreed to accept specifically negotiated, discounted rates for their services that out-of-network providers have not agreed to accept, and that the ERISA Plan Defendants provide certain incentives to the in-network providers.

331. PLAINTIFFS are informed and believe that the ERISA Plan Defendants also typically provide that outpatient surgical services performed at an ASC are eligible for coverage under the plans.

332. PLAINTIFFS are informed and believe that under each of the ERISA Plan Defendants at issue in this litigation that offer in-network and out-of-network

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1 coverage, and pursuant to the administrative service agreements between Aetna and
 2 the other Defendants, Aetna provides access to its provider network to members of
 3 the plans.

4 333. Some ASCs have written contracts with Aetna, under which they agree
 5 to accept reimbursement amounts that are discounted from the ASC's total billed
 6 charges, in exchange for the benefits of being an in-network provider (also
 7 sometimes called a "contracted" or "participating" provider) for Aetna's network.
 8 These benefits typically include an increased volume of business, because the health
 9 benefit plans provide financial incentives to their members to utilize the services of
 10 in-network providers – such as reduced co-insurance payments, annual deductibles
 11 and/or annual out-of-pocket maximums – as well as incentives to the contracted
 12 providers.

13 334. Conversely, some ASCs, including PLAINTIFFS, do not have written
 14 contracts to be part of Aetna's network. They are out-of-network providers (also
 15 sometimes called "non-contracted" or "non-participating" providers). As a result,
 16 these ASCs receive a lesser volume of patients from the health benefit plans Aetna
 17 administers, but they are not required to accept the discounted in-network amounts
 18 for the services rendered to the plan members.

19 335. Whether the benefits claims are from out-of-network ASCs, such as
 20 PLAINTIFFS, or from in-network ASCs, the claims reflect the ASCs' actual billed
 21 charge for the claims. Even though in-network ASCs are typically reimbursed
 22 according to the discounted contract rates they negotiated to become part of the
 23 network, they still submit their full billed charges on the claim. This practice is
 24 industry standard for all providers, and reflects the well-established fact that charges
 25 are not the same as discounted in-network contract rates. Therefore, Aetna has for
 26 many years acquired a wealth of charge data from which it could price
 27 PLAINTIFFS' claims through a proper comparison of prevailing charges for similar
 28

1 health care services by similar ASCs within the same geographical market at the
2 time.

3 336. Each year Aetna processes hundreds of claims submitted by
4 PLAINTIFFS for health care services that PLAINTIFFS provides to members
5 pursuant to the ERISA Plan Defendants and the assignments of benefits under those
6 ERISA Plan Defendants that PLAINTIFFS receive from the members.
7 PLAINTIFFS timely submitted numerous claims for payment to Aetna as a result of
8 services provided by PLAINTIFFS to the members. To date, Defendants have
9 reimbursed PLAINTIFFS for only a fraction of the amount due to PLAINTIFFS in
10 respect of the claims, despite many appeals and demands submitted to Defendants
11 by or on behalf of PLAINTIFFS.

12 337. At all relevant times, PLAINTIFFS submitted the appropriate claim
13 forms for payment to Aetna. The claim forms include information such as the type
14 of procedure, the coding for the procedure, the fact that PLAINTIFFS are an
15 assignee of the member's benefits, and other information by which the claim can be
16 processed and paid. The claim form also includes PLAINTIFFS' billed charges.
17 These bills are submitted on industry standard forms, commonly known as Uniform
18 Billing ("UB") forms. The "charge" amount that PLAINTIFFS submits on a
19 reimbursement claim is the same regardless of whether the payor is an out-of-
20 network payor, an in-network payor, a government payor, or a private payor. This
21 also is industry standard.

22 338. PLAINTIFFS' billed charges are competitive with both other out-of-
23 network ASCs and in-network ASCs in the same geographic region in which
24 PLAINTIFFS provides services.

25 339. In accordance with the assignment of benefits, after processing
26 PLAINTIFFS' claim, either Aetna or the ERISA Plan Defendants sends the
27 reimbursement check and an accompanying EOB directly to PLAINTIFFS, thereby
28

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1 affirming the validity of the assignment of benefits and acknowledging
 2 PLAINTIFFS' status as the "beneficiary" and "claimant" for benefits.

3 340. In most instances, as an out-of-network provider of health care
 4 services, PLAINTIFFS submitted the claims to Aetna for pricing and payment
 5 according to a payment rate that in the industry and in plan documents is commonly
 6 referred to as the "Usual, Customary and Reasonable" rate, the "Reasonable and
 7 Customary" amount, the "Usual and Customary" amount, the "Reasonable Charge,"
 8 the "Prevailing Rate," the "Usual Fee," the "Competitive Fee," or some other
 9 similar phrase that, in the context of the healthcare industry, and in the Defendants'
 10 own parlance, means essentially the same thing. The industry shorthand for these
 11 terms is "UCR."

12 341. For decades, commercial payors like Aetna have purported to
 13 reimburse for out-of-network services according to the UCR rate. The UCR amount
 14 is properly determined based on a review of the prevailing or competitive charges
 15 for similar health care services by similar types of providers within the same
 16 geographical area at the time. Reimbursement at the UCR rate has become so-well
 17 established and understood that some states, including California, now require
 18 certain health benefit plans to reimburse out-of-network services at rates using
 19 criteria that parallel the industry-standard for determining UCR. *See, e.g.*, 28 C.C.R.
 20 § 1300.71(a)(3)(B) (referring to prevailing provider rates **charged** in the general
 21 geographic area in which the services were rendered).

22 342. Aetna, through the plan documents, marketing materials, insurance
 23 verification and eligibility materials, EOBs, appeal response letters, and other
 24 written and oral statements, represented to PLAINTIFFS, and to their members with
 25 out-of-network benefit coverage, that it would pay for out-of-network services in an
 26 amount that is the lower of either the provider's actual billed charge or the UCR
 27 amount.
 28

1 343. For example, in some of its Benefit Plans, Aetna represents that it will
 2 pay out-of-network surgery center claims based upon a "Recognized Charge," which
 3 it defines as follows:

4 Recognized Charge

5 Only that part of a charge which is less than or equal to the
 6 recognized charge is a covered benefit. The recognized
 charge for a service or supply is the lowest of:

- 7 • The **provider's usual charge** for furnishing it; and
- 8 • The charge Aetna determines to be appropriate,
 9 based on factors such as the cost of providing the same or
 a similar service or supply and the manner in which
 10 charges for the service or supply are made, billed or
 coded; or

11 a) For non-facility charges: ...

12 b) For facility charges: Aetna uses the charge Aetna
 13 determines to the **usual charge level made for it in the**
 14 **geographic area where it is furnished.** (Emphasis
 added.)

15 344. Therefore, Aetna's definition of a "Recognized Charge" is similar to the
 16 definition of UCR applied by the California Department of Managed Health Care –
 17 *i.e.*, the rates **charged** by similar providers in the general geographic area in which
 18 the services were rendered.

19 345. PLAINTIFFS, however, are informed and believe that Aetna, on behalf
 20 of itself and the ERISA Plan Defendants – has participated in the systematic
 21 underpricing and underpayment of PLAINTIFFS' claims, as well as in the
 22 systematic obfuscation, misrepresentation and concealment of that misconduct.
 23 Aetna has not, in fact, applied a proper UCR methodology to calculate the payments
 24 of PLAINTIFFS' claims, in that it has not priced PLAINTIFFS based upon the rates
 25 **charged** by similar providers in the general geographic area in which the services
 26 were rendered. On the contrary, Defendants have, in many cases, paid
 27 PLAINTIFFS vastly lower amounts than they paid for similar services to an
 28 affiliated out-of-network ASC in the same geographic area at during the same

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1 general period of time. PLAINTIFFS are informed and believe that the reduced
 2 payments received by PLAINTIFFS were based on Aetna's flawed and improper
 3 methodologies for determining UCR, which failed to take into satisfy the UCR
 4 standard.

5 346. PLAINTIFFS are informed and believe that Aetna and the ERISA Plan
 6 Defendants know that Aetna's methodologies do not actually establish a UCR
 7 amount, and that, as a consequence, PLAINTIFFS are being systematically
 8 underpaid for its services. Nonetheless, rather than disclosing the true
 9 methodologies being used to calculate the benefit determinations and reimbursement
 10 payments for PLAINTIFFS' claims, the Defendants made misrepresentations – to
 11 PLAINTIFFS and to their own members – either that Aetna had accurately and
 12 appropriately calculated the amount owed to PLAINTIFFS pursuant to the UCR
 13 standard, when in fact Aetna did not calculate the payment to PLAINTIFFS based
 14 on a comparison of what other similar healthcare providers in the geographic region
 15 charge.

16 **D. Example Claims**

17 347. For example, the following examples demonstrate how Aetna and the
 18 ERISA Plan Defendants repeatedly used misrepresentations, omissions, misleading
 19 statements and other efforts to conceal its true methods for pricing PLAINTIFFS'
 20 claims:

21 348. Patient A²--Defendant Applied Materials, Inc. Welfare Plan

22 a) Patient A is a beneficiary under the Applied Materials, Inc. Welfare
 23 Plan. Patient A came to Knowles Surgery Center for a surgical procedure on June
 24 11, 2012. Prior to the procedure, Knowles Surgery Center obtained an assignment
 25

26 ² The names of the patients set forth herein as examples have been changed to
 27 letters, and the dates of service limited to the month of service, to preserve patient
 28 confidentiality. PLAINTIFFS will disclose patient identity information to
 Defendants on an as-needed basis and pursuant to a protective order.

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1 of benefits from Patient A, as well as an authorization to appeal Aetna's benefit
 2 determination as Patient A's designated representative. Following its regular
 3 business practice, Knowles Surgery Center contacted Aetna to verify Patient A's
 4 eligibility and out-of-network benefits, which, on information and belief, provided
 5 for payment of out-of-network benefits for Patient A at 70% after any applicable
 6 deductibles and up to any annual out-of-pocket maximum). Aetna verified Patient
 7 A's eligibility and benefits. Thereafter, in reasonable reliance on this eligibility and
 8 benefit verification, Knowles Surgery Center provided its services to Patient A.
 9 PLAINTIFFS billed Aetna in a timely manner, and the total charges for
 10 PLAINTIFFS' services were \$25,000.

11 b) In the EOB that Aetna sent to PLAINTIFFS dated July 6, 2012,
 12 Aetna stated that the "Amount Allowed" was only \$9,807, and, after further
 13 applying a patient deductible and the out-of-network benefit level, Aetna paid only
 14 \$6,864.90 for the claim. The amounts Aetna allowed and paid on the claim were not
 15 reasonable. PLAINTIFFS are informed and believe that the Applied Materials, Inc.
 16 Welfare Plan includes a definition of UCR that is similar the definition of UCR used
 17 by Aetna is its Benefit Plans, which is based on the providers' usual charges in the
 18 geographic area where the services are provided. PLAINTIFFS are informed and
 19 believe that Aetna's calculation of the allowed amount was not based on the
 20 definition of UCR in the Applied Materials, Inc. Welfare Plan. Instead, Aetna
 21 created its own methodology for calculating UCR which is not based on the Applied
 22 Materials, Inc. Welfare Plan. The EOB Aetna provided to PLAINTIFFS for this
 23 claim stated: "The member's plan provides benefits for covered expenses at a
 24 reasonable charge. The reasonable charge for this service is determined by Global
 25 Claim Services for Aetna. The amount indicated represents the difference between
 26 the submitted amount and the reasonable charge." The EOB does not refer to the
 27 specific provision in the Applied Materials, Inc. Welfare Plan on which Aetna (or
 28 Global Claim Services) calculated the payment to PLAINTIFFS, as Aetna is

1 required to do under the ERISA regulations. 29 C.F.R. § 2560-503-1. Thus, Aetna
 2 misrepresented that the reimbursement amount for Patient A was calculated based
 3 on UCR, as defined in the ERISA plan, when in fact Aetna knew that the
 4 reimbursement was calculated using a methodology that does not reflect UCR, as
 5 defined in the ERISA plan.

6 c) Knowles Surgery Center timely appealed the claim
 7 reimbursement. On December 18, 2012, Aetna responded in a letter to PLAINTIFFS
 8 stating:

9 The basis for this determination is that this member's benefit plan
 10 provides reimbursement for out-of-network services based upon a
 reasonable or recognized charge.

11 For outpatient facility claims of \$1,000 or more, Aetna's Global Claims
 12 Services (GCS) reviews hospital or facility charges to determine the
 13 financial reasonableness and appropriateness of charges. The process
 14 used to calculate the reasonable or recognized charges for outpatient
 15 hospital expenses includes licensed commercial data, which allows plan
 sponsor selection of the percentile used as reasonable or recognized.
 The database is geographically specific, as it is based on the zip code
 regions determined by CMS (Center for Medicare and Medicaid
 Services).

16 These representations were false in that Aetna did not properly apply a UCR
 17 methodology to price this claim. The claim was not based on the complexity of the
 18 service, the range of services provided, or the most frequent charge level in the
 19 provider's location and in other areas having similar medical experience. Aetna
 20 refused to reprocess the claim and pay a reasonable amount for the services
 21 consistent with Applied Material, Inc.'s Welfare Plan.

22 349. Patient B—Defendant Broadcom Corporation Welfare Plan

23 a) Patient B is a beneficiary under the Broadcom Corporation Welfare
 24 Plan. Patient B came to Knowles Surgery Center for a surgical procedure on May 3,
 25 2012. Prior to the procedure, Knowles Surgery Center obtained an assignment of
 26 benefits from Patient B, as well as an authorization to appeal Aetna's benefit
 27 determination as Patient B's designated representative. Following its regular
 28 business practice, Knowles Surgery Center contacted Aetna to verify Patient B's

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1 eligibility and out-of-network benefits, which, on information and belief, provided
 2 for payment of out-of-network benefits for Patient B at 80% (after any applicable
 3 deductibles and up to any annual out-of-pocket maximum). Aetna verified Patient
 4 B's eligibility and benefits. Thereafter, in reasonable reliance on this eligibility and
 5 benefit verification, Knowles Surgery Center provided its services to Patient B.
 6 PLAINTIFFS billed Aetna in a timely manner, and the total charges for
 7 PLAINTIFFS' services were \$42,964.

8 b) In the EOB that Aetna sent to PLAINTIFFS dated June 8, 2012,
 9 Aetna stated that the "Amount Allowed" was only \$20,120, and, after further
 10 applying a patient deductible and the out-of-network benefit level, Aetna paid only
 11 \$19,089.19 for the claim. The amounts Aetna allowed and paid on the claim were
 12 not reasonable. PLAINTIFFS are informed and believe that the Broadcom
 13 Corporation Welfare Plan includes a definition of UCR that is similar the definition
 14 of UCR used by Aetna is its Benefit Plans, which is based on the providers' usual
 15 charges in the geographic area where the services are provided. PLAINTIFFS are
 16 informed and believe that Aetna's calculation of the allowed amount was not based
 17 on the definition of UCR in the Broadcom Corporation Welfare Plan. Instead,
 18 Aetna created its own methodology for calculating UCR which is not based on the
 19 Broadcom Corporation Welfare Plan. The EOB Aetna provided to PLAINTIFFS
 20 for this claim stated: "The member's plan provides benefits for covered expenses at
 21 a reasonable charge. The reasonable charge for this service is determined by Global
 22 Claim Services for Aetna. The amount indicated represents the difference between
 23 the submitted amount and the reasonable charge." The EOB does not refer to the
 24 specific provision in the Broadcom Corporation Welfare Plan on which Aetna (or
 25 Global Claim Services) calculated the payment to PLAINTIFFS, as Aetna is
 26 required to do under the ERISA regulations. 29 C.F.R. § 2560-503-1. Thus, Aetna
 27 misrepresented that the reimbursement amount for Patient A was calculated based
 28 on UCR, as defined in the ERISA plan, when in fact Aetna knew that the

1 reimbursement was calculated using a methodology that does not reflect UCR, as
2 defined in the ERISA plan.

3 c) Knowles Surgery Center timely appealed the claim
4 reimbursement. On November 30, 2012, Aetna responded in a letter to
5 PLAINTIFFS stating:

6 The basis for this determination is [Patient B's] benefit plan covers out-
7 of-network charges that are Usual, Customary, and Reasonable (UCR).

8 . . .

9 For outpatient facility claims of \$1,000 or more (such as those at issue
10 in this matter), Aetna's Global Claims Services group determines the
11 prevailing charge level for the service using the MarketScan database
12 licensed from Thomson Medstat. This database consists of charges
submitted by outpatient facilities to commercial payors and sorted into
geographic areas using Core-Based Statistical Areas; the charges are
then arrayed into percentiles according to the procedure code and the
Core-Based Statistical Area.

13 These representations were false in that Aetna did not properly apply a UCR
14 methodology to price this claim. The claim was not based on the complexity of the
15 service, the range of services provided, or the most frequent charge level in the
16 provider's location and in other areas having similar medical experience. Aetna
17 refused to reprocess the claim and pay a reasonable amount for the services
18 consistent with the Broadcom Corporation Welfare Plan.

19 350. Patient C—Defendant SAP America Health & Welfare Plan

20 a) Patient C is a beneficiary under the SAP America Health &
21 Welfare Plan. Patient C came to Los Altos Surgery Center for a surgical procedure
22 on September 26, 2012. Prior to the procedure, Los Altos Surgery Center obtained
23 an assignment of benefits from Patient C, as well as an authorization to appeal
24 Aetna's benefit determination as Patient C's designated representative. Following
25 its regular business practice, Los Altos Surgery Center contacted Aetna to verify
26 Patient C's eligibility and out-of-network benefits, which, on information and belief,
27 provided for payment of out-of-network benefits for Patient C at 70% (after any
28 applicable deductibles and up to any annual out-of-pocket maximum). Aetna

1 verified Patient C's eligibility and benefits. Thereafter, in reasonable reliance on
 2 this eligibility and benefit verification, Los Altos Surgery Center provided its
 3 services to Patient C. PLAINTIFFS billed Aetna in a timely manner, and the total
 4 charges for PLAINTIFFS' services were \$151,072.

5 b) In the EOB that Aetna sent to PLAINTIFFS dated December 21,
 6 2012, Aetna stated that the "Amount Allowed" was only \$41,829.50, and Aetna paid
 7 only this amount for the claim. The amounts Aetna allowed and paid on the claim
 8 were not reasonable. PLAINTIFFS are informed and believe that the SAP America
 9 Health & Welfare Plan includes a definition of UCR that is similar the definition of
 10 UCR used by Aetna is its Benefit Plans, which is based on the providers' usual
 11 charges in the geographic area where the services are provided. PLAINTIFFS are
 12 informed and believe that Aetna's calculation of the allowed amount was not based
 13 on the definition of UCR in the SAP America Health & Welfare Plan. Instead,
 14 Aetna created its own methodology for calculating UCR which is not based on the
 15 SAP America Health & Welfare Plan. The EOB Aetna provided to PLAINTIFFS
 16 for this claim stated: "The member's plan provides benefits for covered expenses at
 17 a reasonable charge. The reasonable charge for this service is determined by Global
 18 Claim Services for Aetna. The amount indicated represents the difference between
 19 the submitted amount and the reasonable charge." The EOB does not refer to the
 20 specific provision in the SAP America Health & Welfare Plan on which Aetna (or
 21 Global Claim Services) calculated the payment to PLAINTIFFS, as Aetna is
 22 required to do under the ERISA regulations. 29 C.F.R. § 2560-503-1. Thus, Aetna
 23 misrepresented that the reimbursement amount for Patient A was calculated based
 24 on UCR, as defined in the ERISA plan, when in fact Aetna knew that the
 25 reimbursement was calculated using a methodology that does not reflect UCR, as
 26 defined in the ERISA plan.

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1 c) Los Altos Surgery Center timely appealed the claim
 2 reimbursement. On May 16, 2013, Aetna responded in a letter to PLAINTIFFS
 3 stating:

4 The patient's plan provides reimbursement for out-of-network services
 5 based upon a reasonable or recognized charge. For outpatient facility
 6 claims of \$1,000 or more, Aetna's Global Claims Services (GCS)
 7 reviews hospital or facility charges to determine the financial
 8 reasonableness and appropriateness of charges.

9 The process used to calculate the reasonable or recognized charges for
 10 outpatient hospital expenses includes licensed commercial data, which
 11 allows plan sponsor selection of the percentile used as reasonable or
 12 recognized. The database is geographically specific, as it is based on
 13 the zip code regions determined by CMS (Center for Medicare and
 14 Medicaid Services).

15 These representations were false in that Aetna did not properly apply a UCR
 16 methodology to price this claim. The claim was not based on the complexity of the
 17 service, the range of services provided, or the most frequent charge level in the
 18 provider's location and in other areas having similar medical experience. Aetna
 19 refused to reprocess the claim and pay a reasonable amount for the services
 20 consistent with the SAP America Health & Welfare Plan.

21 351. Patient D—Defendant Bausch & Lomb Comprehensive Medical Plan

22 a) Patient D is a beneficiary under the Bausch & Lomb
 23 Comprehensive Medical Plan. Patient D came to SOAR Surgery Center for a
 24 surgical procedure on December 17, 2012. Prior to the procedure, SOAR Surgery
 25 Center obtained an assignment of benefits from Patient D, as well as an
 26 authorization to appeal Aetna's benefit determination as Patient D's designated
 27 representative. Following its regular business practice, SOAR Surgery Center
 28 contacted Aetna to verify Patient D's eligibility and out-of-network benefits, which,
 on information and belief, provided for payment of out-of-network benefits for
 Patient D at 90% (after any applicable deductibles and up to any annual out-of-
 pocket maximum). Aetna verified Patient D's eligibility and benefits. Thereafter,
 in reasonable reliance on this eligibility and benefit verification, SOAR Surgery

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Center provided its services to Patient D. PLAINTIFFS billed Aetna in a timely manner, and the total charges for PLAINTIFFS' services were \$10,596.

b) In the EOB that Aetna sent to PLAINTIFFS dated February 13, 2013, Aetna stated that the "Amount Allowed" was only \$5,644, and, after further applying a patient deductible and the out-of-network benefit level, Aetna paid only \$5,079.60 for the claim. The amounts Aetna allowed and paid on the claim were not reasonable. PLAINTIFFS are informed and believe that the Bausch & Lomb Comprehensive Medical Plan includes a definition of UCR that is similar the definition of UCR used by Aetna is its Benefit Plans, which is based on the providers' usual charges in the geographic area where the services are provided. PLAINTIFFS are informed and believe that Aetna's calculation of the allowed amount was not based on the definition of UCR in the Bausch & Lomb Comprehensive Medical Plan. Instead, Aetna created its own methodology for calculating UCR which is not based on the Bausch & Lomb Comprehensive Medical Plan. The EOB Aetna provided to PLAINTIFFS for this claim stated: "The member's plan provides benefits for covered expenses at a reasonable charge. The reasonable charge for this service is determined by Global Claim Services for Aetna. The amount indicated represents the difference between the submitted amount and the reasonable charge." The EOB does not refer to the specific provision in the Bausch & Lomb Comprehensive Medical Plan on which Aetna (or Global Claim Services) calculated the payment to PLAINTIFFS, as Aetna is required to do under the ERISA regulations. 29 C.F.R. § 2560-503-1. Thus, Aetna misrepresented that the reimbursement amount for Patient A was calculated based on UCR, as defined in the ERISA plan, when in fact Aetna knew that the reimbursement was calculated using a methodology that does not reflect UCR, as defined in the ERISA plan.

c) SOAR Surgery Center timely appealed the claim reimbursement. On August 7, 2013, Aetna responded in a letter to PLAINTIFFS stating that it was upholding its previous determination.

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1 352. PLAINTIFFS are informed and believe that Aetna has engaged in the
 2 same practice with respect to all the other Defendants in this action. PLAINTIFFS
 3 are informed and believe that all of the Benefit Plans at issue in this action have
 4 provisions which mandate that out-of-network payments to non-contracted
 5 providers, such as PLAINTIFFS, be based on a UCR definition which requires
 6 Aetna and the other Defendants to calculate payment based on a comparison of
 7 PLAINTIFFS' **charges** to the **charges** of other similar providers for similar services
 8 in the same geographic area as PLAINTIFFS. PLAINTIFFS are informed and
 9 believe that Aetna and the other Defendants did not calculate the payments to
 10 PLAINTIFFS based upon the definitions in the ERISA Plans as required by the
 11 ERISA regulations, 29 C.F.R. § 2560-503-1, but instead used a methodology created
 12 by Global Claim Services which is not based upon the ERISA plans and does not
 13 calculate UCR based on a comparison of PLAINTIFFS' **charges** to the **charges** of
 14 other similar providers for similar services in the same geographic area as
 15 PLAINTIFFS. Accordingly, in violation of ERISA, Aetna and the other Defendants
 16 have failed to apply the provisions and requirements of the ERISA Plans in paying
 17 PLAINTIFFS' claims, and have failed to appropriately and fairly compensate
 18 PLAINTIFFS for the medically necessary services PLAINTIFFS provided to
 19 Defendants' members. A complete list of all the patient claims at issue will be
 20 provided to Defendants.

21 **E. The Harm Caused To PLAINTIFFS**

22 353. PLAINTIFFS are informed and believe that, and thereon alleges, that
 23 all of its claims which were underpaid involve health benefit plans in which out-of-
 24 network benefits for ASCs are intended to be paid in accordance with the UCR
 25 standard set forth in the ERISA Plans. It is an abuse of their discretion and fiduciary
 26 duties for Defendants to calculate out-of-network benefits according to a
 27 methodology which (a) is not based on the ERISA Plans and (b) does not adequately
 28

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1 compare PLAINTIFFS' charges with charges of similarly-situated providers in the
 2 same geographic area at the time.

3 354. By using flawed and inappropriate methodologies to price and pay
 4 PLAINTIFFS' out-of-network, the Defendants have systematically and drastically
 5 underpriced and underpaid PLAINTIFFS for its services. The current amount owed
 6 by Aetna to PLAINTIFFS is approximately \$26,873,616.82, plus interest.

7 355. Moreover, Aetna intentionally misled PLAINTIFFS to believe that
 8 benefits were reimbursed in accordance with the UCR standard set forth in the
 9 ERISA Plans. As alleged above, when PLAINTIFFS contacted Aetna to verify out-
 10 of-network benefits, Aetna routinely led PLAINTIFFS to believe that benefits were
 11 available at a UCR rate set forth in the ERISA Plans. Yet the Defendants rarely
 12 paid PLAINTIFFS' claims at the represented percentage of UCR, and instead
 13 improperly reimbursed PLAINTIFFS' claims based on one or more arbitrary,
 14 capricious, and improper methodologies such as those set forth above.

15 356. Furthermore, the EOBs, appeal response letters, and other
 16 communications from Aetna represented that benefits were in fact determined based
 17 on the UCR rate. At no point did Aetna adequately disclose its true pricing
 18 methodologies, which do not satisfy the UCR standard or the provisions in the
 19 ERISA Plans.

20 357. PLAINTIFFS suffers direct harm by incurring expenses to provide the
 21 services, and then is forced into the position of incurring further expenses seeking
 22 corrected reimbursements from Defendants and having to attempt to collect amounts
 23 from members that the members justifiably believe should be covered by their
 24 health benefit plans. PLAINTIFFS are informed and believe that the members also
 25 reasonably expected that their health benefit plans, which purport to give them the
 26 freedom to choose out-of-network providers, would properly calculate and pay out-
 27 of-network benefits according to UCR. PLAINTIFFS often is unable to collect
 28 balances from the members, thereby having to take a loss for its services.

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1 PLAINTIFFS also suffers a loss on the costs of supplies, space, equipment, etc., that
 2 PLAINTIFFS expends to provide the services to Defendants' members.

3 358. By falsely representing that the members are liable for amounts that the
 4 members in fact do not owe under the terms of their health benefit plans, and by
 5 forcing PLAINTIFFS to pursue improper amounts from the members, Defendants'
 6 illegal and improper actions also have harmed the relationships that PLAINTIFFS
 7 has with its patients, making it difficult for PLAINTIFFS to continue to operate its
 8 business.

9 359. PLAINTIFFS are informed and believe that through the wrongful
 10 conduct set forth above, Defendants intentionally seek to ruin PLAINTIFFS' ability
 11 to compete outside Aetna's "network," and seek to force PLAINTIFFS into
 12 accepting low in-network rates and/or agreeing to oppressive contract terms.

13 360. As a further result of the Defendants' wrongful business practices,
 14 PLAINTIFFS are harmed by having to expend significant time and resources in
 15 trying to appeal Defendants' underpayments.

16 361. As fiduciaries and administrators of Health Plans, the Defendants
 17 occupied and continue to occupy a position of trust, by which they must accurately
 18 represent the terms and conditions of the plans, must disclose all material facts
 19 concerning how plan benefits are priced and determined, and must act in the interest
 20 of the plan and the plan's beneficiaries. Nonetheless, the Defendants either knew or
 21 recklessly disregarded the fact that the misrepresentations, omissions, misleading
 22 statements and concealments described above were material, and that PLAINTIFFS,
 23 as well as the Defendants' members, would and did detrimentally rely on such
 24 misrepresentations, omissions, misleading statements and concealments when
 25 deciding to provide services, and during the claims adjudication and appeal process.

26 362. PLAINTIFFS' business and property has been injured as a proximate
 27 result of the Defendants' conduct, in that PLAINTIFFS provided services to
 28 members as a result of the Defendants' misrepresentations, omissions and

1 concealments about out-of-network benefits, and PLAINTIFFS has been underpaid
 2 approximately \$26,873,616.82, plus interest, for the services rendered to members
 3 in justifiable reliance on the communications they received from the Defendants
 4 concerning pricing and payment of out-of-network benefits.

5 **F. Defendants' Practices Unfairly Shift the Burden of Payment to the**
 6 **Patients**

7 363. PLAINTIFFS are informed and believe that the members of the ERISA
 8 Plan Defendants typically pay higher premiums to have the option to obtain the
 9 services of out-of-network providers than they would pay if their options were
 10 limited to in-network providers (except in emergency circumstances and other
 11 limited exceptions).

12 364. Defendants' failure to appropriately and fairly compensate
 13 PLAINTIFFS for its out-of-network claims has not only injured PLAINTIFFS, it
 14 has also injured the members – *i.e.*, the patients who have obtained, and want to
 15 obtain, services from PLAINTIFFS – by exposing them to significant liability. In
 16 underpricing PLAINTIFFS' claims, Defendants have represented, in EOBs and other
 17 documents, that the members are liable to PLAINTIFFS for amounts that should
 18 have been covered – *i.e.*, the amount of the claim not paid but that Defendants
 19 should have paid if they used an appropriate methodology to calculate UCR. By
 20 systematically underpricing PLAINTIFFS' claims, Aetna and the other Defendants
 21 are illegally transferring liability to the members for amounts that should be covered
 22 by Defendants if the claims were priced and paid according to the UCR standard and
 23 a proper UCR methodology.

24 365. Moreover, the members are further injured because the plans regularly
 25 call for the members to meet certain specified annual out-of-pocket expenditure
 26 thresholds – typically called an annual deductible and an annual out-of-pocket
 27 maximum – in order to receive benefits or increased benefit levels under the plans.
 28 However, any amounts that the members must pay to out-of-network providers

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1 because those amounts are above the allowable UCR amounts as determined by
 2 Aetna typically do not count toward these threshold expenditures. Thus, by
 3 underpricing PLAINTIFFS' claims using inappropriate UCR methods, the
 4 Defendants effectively force the members to pay far larger out-of-pocket costs than
 5 the members' plans require. The result is underpayment of PLAINTIFFS' claims by
 6 Defendants, greater liability for the members with respect to PLAINTIFFS' claims,
 7 and potential greater liability for the members with respect to future claims by
 8 PLAINTIFFS or another provider whose services the member engages. The
 9 combined effect is a gross distortion of the out-of-network benefit provisions set
 10 forth in the plans, and the practical evisceration of the freedom to choose out-of-
 11 network providers that the plans promise to their members – rights for which
 12 members pay increased premiums.

13 **G. PLAINTIFFS' Claims Are Deemed Exhausted And Further**
 14 **Appeals Would Be Futile.**

15 366. PLAINTIFFS timely appealed all of the underpaid claims at issue in
 16 this case. With respect to every appeal, Aetna refused to apply the provisions of the
 17 ERISA Plans, continued to rely on the determination by Global Services as to what
 18 is UCR, and failed to pay PLAINTIFFS a reasonable amount for its services.
 19 Therefore, further appeals on the claims would be futile. In light of the Aetna's
 20 long-standing, repeated and systematic refusal to provide anything more than a
 21 cursory and false and/or misleading explanation concerning its true methods for
 22 calculating reimbursement of PLAINTIFFS' claims, given Aetna's ongoing and
 23 continued use of flawed and inappropriate methodologies to underpay claims in a
 24 manner that fails to comply with the terms of the ERISA Plans and its own
 25 representations, and considering Aetna's repeated and systematic efforts to
 26 misrepresent and conceal its methodologies and the fact that it did not reimburse
 27 PLAINTIFFS' claims in accordance with the UCR standard, further exhaustion of
 28

1 the inadequate administrative remedies also would have been futile and
2 meaningless.

3 367. Moreover, PLAINTIFFS are deemed to have exhausted all
4 administrative remedies available to it because Aetna and the ERISA Plan
5 Defendants failed to establish and follow reasonable claims procedures or a full and
6 meaningful review and appeal process, as required by ERISA. Aetna and the
7 ERISA Plans have routinely failed to process claims submitted by PLAINTIFFS in a
8 manner consistent or substantially in compliance with ERISA regulations. *See* 29
9 C.F.R. § 2560.503-1. Among other things, Aetna and the ERISA Plans:

- 10 (a) failed to notify PLAINTIFFS of benefit determinations and
11 review determinations within the required amount of time after
12 receipt of the claim or appeal;
- 13 (b) failed to provide the specific reason or reasons for their benefit
14 determinations or review determinations, including information
15 concerning the flawed and inappropriate methods used for
16 pricing PLAINTIFFS' out-of-network claims, and frequently
17 provided inconsistent and conflicting explanations for the same
18 benefit determinations;
- 19 (c) failed to make reference to the specific plan provisions on which
20 their benefit determinations or review determinations were
21 based;
- 22 (d) made materially false and misleading statements concerning their
23 methods for determining reimbursement amounts, and refused to
24 disclose the true internal rules, guidelines, protocols and criteria
25 that were relied upon in making the benefit and review
26 determinations;
- 27 (e) failed to provide PLAINTIFFS with a sufficient description of
28 the ERISA Plans' review procedures;
- (f) failed to provide review of appeals that did not afford deference
to the initial benefit determination, and which was conducted by
an appropriate named fiduciary of the plan who is independent of
the person who made the initial benefit determination;
- (g) denied PLAINTIFFS the right to appeal benefit determinations
and/or employed policies designed to unduly obstruct, hamper,
and delay the appeal of claims submitted by PLAINTIFFS,
including, but not limited to, systematic reliance on inappropriate
data, refusal to acknowledge provider appeals as appeals,
requiring more than two levels of appeal, and characterizing
required levels of appeal as discretionary or voluntary; and

(h) denied PLAINTIFFS' efforts to become sufficiently acquainted with the terms of the ERISA Plans, as well as the true methods used to reimburse PLAINTIFFS' claims, thereby rendering the administrative appeal a futile and meaningless endeavor.

368. Instead of complying with the ERISA regulations, Defendants continue to refuse to apply the provisions of the ERISA Plans dealing with UCR calculations, continue to rely on Global Health Services' inappropriate methodologies and data for calculating UCR, and fail to provide review of appeals that did not afford deference to the initial benefit determination.

369. ERISA requires that Defendants have a benefit determination and claim appeal process that provides a full, meaningful, and independent review, and that affords plan beneficiaries and claimants broad rights to accurate, timely and substantive information regarding the reasons, rules, methodologies, terms, provisions and interpretations that underlie the benefit determinations. Defendants' false and/or misleading statements, acts of concealment and failures to disclose were knowing and intentional, and had the design and effect of preventing a full and meaningful evaluation and review of the grounds for initial benefit determinations and benefit determinations on review. Defendants' failure to provide a full and fair review of PLAINTIFFS' claims and appeals rarely results in any additional payment. The appeals are therefore rendered futile due to the Defendants' systematic misrepresentations, omissions and misleading statements intended to conceal the true methods that Aetna uses to price PLAINTIFFS' claims.

H. Aetna's Conflict of Interest

370. PLAINTIFFS are informed and believe that Aetna had numerous motivations to create excuses to delay and ultimately deny PLAINTIFFS' claims. As a result, Aetna's actions were tainted by an actual conflict of interest.

371. PLAINTIFFS are informed and believe that a primary motivation that Aetna had for underpaying PLAINTIFFS' claims is that Aetna is substantially compensated by the Plans for doing so. PLAINTIFFS are informed and believed

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that when Aetna is paid a commission by the Plans based upon the amount of money the Plans “save” by not having to pay Plaintiffs. PLAINTIFFS are informed and believed that Aetna is compensated at a specific percentage of the money that Defendants would otherwise have had to pay to PLAINTIFFS, had Aetna correctly paid PLAINTIFFS’ claims. This provided a major incentive for Aetna to find ways to underpay PLAINTIFFS’ claims.

372. Aetna’s receipt of kickbacks and/or commissions for denying Plaintiffs’ claims is a clear and willful violation of California Health & Safety Code § 1399.56 and/or Insurance Code § 796.02, which provide that claims reviewers may not be compensated on the basis of (a) a percentage of the amount by which a claim is reduced for payment; or (b) the number of claims or the cost of services that were denied and not paid.

373. Likewise, Aetna’s receipt of kickbacks and/or commissions is an egregious instance of self-dealing and a breach of fiduciary duties it owes to the beneficiaries and participants of the ERISA plans. Aetna’s behavior violates, at a minimum, 29 U.S.C. § 1106(b)(2), which states that “A fiduciary with respect to a plan shall not—(1) deal with the assets of the plan in his own interest or for his own account”

I. Failure to Provide Requested Documents

374. 29 U.S.C. § 1024(b) requires Defendants to produce the “summery plan description . . . or other instruments under which the plan is established or operated.”

375. The documents sought by plaintiffs fall within the ambit of this section. As this Court, and the Ninth Circuit, have noted:

The relevant documents are those documents that provide individual participants with information about the plan and benefits. As the legislative history bears out, the documents contemplated by § 104(b)(4) are those that allow "the individual participant [to] know[]

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exactly where he stands with respect to the plan – what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted. S. Rep. No. 127, 93rd Cong., 2d Sess. (1974), reprinted in 1974 U.S.C.C.A.N. 4838, 4863.

Eden Surgical Center v. Budco Group, Inc., No. CV-09-3991 AHM (Ex), 2010 WL 2180360, at *6 (May 27, 2010) (citing *Hughes Salaried Retirees Action Committee v. Administrator of Hughes Non-Bargaining Retirement Plan*, 72 F.3d 686, 690 (9th Cir. 1995)).

376. 29 C.F.R. § 2560-503-1(h) provides in pertinent part:

(h) Appeal of adverse benefit determinations

(1) In general. Every employee benefit plan shall establish and maintain a procedure by which a claimant shall have a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary of the plan, and under which there will be a full and fair review of the claim and the adverse benefit determination.

(2) Full and fair review. Except as provided in paragraphs (h)(3) and (h)(4) of this section, the claims procedures of a plan will not be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures ...

(iii) Provide that a claimant shall be provided, upon request and free of charge, reasonable access to, and **copies of, all documents, records, and other information relevant to the claimant's claim for benefits**. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section; ... (Emphasis added.)

377. In appealing the claims at issue in this case, PLAINTIFFS explicitly requested that Defendants produce all the documents they are required to produce under the ERISA statute and regulations. Every appeal letter included the following language:

... **we hereby specifically request from you**, this plan administrator or

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appropriate named fiduciary, any copies of the plan documents under which this plan is operated and upon which the above captioned claim denial is based, procedures, formulas, methodologies, guidelines, schedules, protocols, and other guidelines; all documents which the plan reviewed or could have reviewed in denying this claim; consultant or service provider reports and **the entire claim file** pertinent to this claim denial, **including but not limited to** ...

1. Identification of the Plan Administrator ..

2. Identification of Appropriate Named Fiduciaries ...

5. Complete copy of Summary Plan Description (SPD) of this plan (not just selected pages), please specify reference to the pertinent plan provisions on which the denial is based and clarify if this SPD provided upon this request is final and complete controlling and governing plan document;

6. AND If SPD is not final and complete controlling and governing plan document for this plan, please provide a complete copy of your controlling and governing legal documents for this plan, with specific provisions and limitations of coverage, assignment and ERISA rights, including but not limited to any official copy of Medical Plan Document, Master Copy of Group Insurance Policy, Group Insurance Certificates and Riders, *upon which this plan is maintained and operated, and your denial decisions are based.* ...

10. Publications, database and schedules used to determine your Usual, Customary and Reasonable charges in accordance with DOL Advisory Opinion 96-14A. ...

17. Complete copy of any past and current contracts between employee benefit plan and third party administrator (TPA) ...

378. In Advisory Opinion 96-14A, the United States Department of Labor stated that if the Plan document does not include the schedule of "usual and customary" fees,

"it is the view of the Department of Labor that, for purposes of section 104(b)(2) and 104(b)(4), any document or instrument that specifies procedures, formulas, methodologies, or schedules to be applied in determining or calculating an participant's or beneficiary's benefit entitlement under an employee benefit plan would constitute an instrument under which the plan is established or operated, regardless of whether such information is contained in a document designated as the 'plan document.' ... Thus, it appears that the schedule of 'usual and customary' fees described in your letter would be required to be disclosed to participants and beneficiaries in accordance with section 104(b)(2) and 104(b)(4) of ERISA."

379. Defendants failed to provide the requested documents to PLAINTIFFS.
For example:

- a) In most instances, Defendants failed to provide a copy of the SPD or ERISA Plan.
- b) In every instance, Defendants failed to provide copies of procedures, formulas, methodologies, or schedules applied by Aetna or Global Claims Services in determining UCR amounts.
- c) In every instance, Defendants failed to provide copies of contracts between Aetna and the ERISA Plan Defendants.

380. Section 502(c)(1) of ERISA imposes a fine of up to \$110 per day upon a plan administrator who “fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary.” 29 U.S.C. §§ 1132(c)(1); see also id. § 1133, 29 C.F.R. §§ 2650.503-1, 2575.512c-3.

FIRST CLAIM FOR RELIEF

Enforcement Under 29 U.S.C. § 1132(a)(1)(B) For Failure To Pay ERISA Plan Benefits (Against All Defendants)

381. The allegations of the prior paragraphs of this Complaint are hereby repeated as if fully set forth herein.

382. This cause of action is alleged by PLAINTIFFS for relief in connection with claims for treatment rendered to members of a ERISA Plans. This cause of action seeks to recover benefits, enforce rights and clarify rights to benefits under 29 U.S.C. § 1132(a)(1)(B). PLAINTIFFS has standing to pursue these claims as assignee of the members’ benefits under the ERISA Plans. As the assignee of benefits under the ERISA Plans, PLAINTIFFS are a “beneficiary” entitled to collect benefits under the terms of the ERISA Plans, and is the “claimant” for purposes of the ERISA statute and regulations.

383. ERISA authorizes actions under 29 U.S.C. § 1132(a)(1)(B) to be brought against the ERISA Plans as entities, against the ERISA Plans’ administrators, and against other appropriate entities. PLAINTIFFS are informed

1 and believe that each of the ERISA Plan Defendants identified as an “ERISA plan”
 2 earlier in this Third Amended Complaint are all ERISA Plans. Therefore, these
 3 entities are proper defendants for this claim.

4 384. PLAINTIFFS are informed and believe that, with respect to each of the
 5 ERISA Plan Defendants at issue in this, Aetna effectively controls the decision
 6 whether to honor or to deny a claim under the plan, exercises authority over the
 7 resolution of benefit claims, and/or has responsibility to pay the claims. Therefore,
 8 Aetna is a proper defendant for this claim. Aetna also plays a role as the *de facto*
 9 plan administrator for such plans. Aetna functioned as plan administrators insofar as
 10 it has, among other things, provided plan documents to participants, received benefit
 11 claims, evaluated and processed those claims, reviewed and interpreted the terms of
 12 the plan, made initial benefit determinations, made and administered benefit
 13 payments, handled appeals of benefit determinations, and served as the primary
 14 point of contact for members and providers to communicate regarding benefits and
 15 benefit determinations.

16 385. At all relevant times, PLAINTIFFS was entitled to reimbursement
 17 under the ERISA Plans in accordance with the UCR standard on each of the claims
 18 at issue in this litigation. Aetna and the ERISA Plan Defendants breached the
 19 ERISA Plans’ benefits provisions by underpricing and underpaying PLAINTIFFS
 20 for the out-of-network services provided by PLAINTIFFS to the members and
 21 covered under the ERISA Plans, and due to PLAINTIFFS as the assignee of the
 22 members’ out-of-network benefits. As set forth more fully above, the breaches
 23 included failing to pay out-of-network benefits under the plan pursuant to the UCR
 24 standard. The breaches also included, among other things, interpreting and
 25 implementing the ERISA Plan terms in a way that systematically was arbitrary and
 26 capricious, making material misrepresentations regarding the manner in which out-
 27 of-network benefits are priced, making false representations that PLAINTIFFS’ out-
 28 of-network claims were paid based upon a comparison of PLAINTIFFS’ charges

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1 with amounts charged by similar providers for similar services or supplies, using
 2 improper methodologies to miscalculate the UCR rate, systematically reducing
 3 benefits paid to PLAINTIFFS for its out-of-network services, and failing to provide
 4 a benefit determination and appeal process that provides for a full and meaningful
 5 review of benefit claims and determinations.

6 386. By reason of the foregoing, PLAINTIFFS are entitled to past due
 7 benefits, future benefits, declaratory relief, prejudgment interest, and attorneys' fees.
 8 The Court should specifically declare that PLAINTIFFS are entitled to have Aetna
 9 and the ERISA Plan Defendants:

- 10 (a) compile a valid database of charges by PLAINTIFFS and other
 11 similar providers in the same geographic area (the distance that
 12 could reasonably be considered appropriate for a member to
 13 travel in the same area);
- 14 (b) calculate PLAINTIFFS' past and future benefits pursuant to a
 15 valid database that takes into account valid data and, in
 16 accordance with the UCR standard, the rates charged by
 17 PLAINTIFFS and other similar providers for similar services in
 18 the same geographic area at the time;
- 19 (c) determine the UCR rate for PLAINTIFFS' out-of-network
 20 services without reference to discounted contract rates applicable
 21 to in-network providers;
- 22 (d) determine the UCR rate for PLAINTIFFS' out-of-network
 23 services without reference to Medicare rates or schedules;
- 24 (e) determine the UCR rate for PLAINTIFFS' out-of-network
 25 services without reference to the California OMFS fee schedule,
 26 other rates used for workers' compensation claims, or any other
 27 state-imposed fee schedule;
- 28 (f) pay the correct UCR amounts to PLAINTIFFS for past benefit
 claims that were underpaid;
- (g) pay future PLAINTIFFS benefit claims using an appropriate
 methodology for determining UCR rates;
- (h) issue new EOBs for past benefit claims, and correct EOBs for
 future benefit claims, that are in compliance with applicable
 regulatory notice standards;
- (i) implement benefit claims and appeal processes that provide a
 full, meaningful and independent review of benefit
 determinations, and that are consistent and substantially in
 compliance with ERISA regulations and the terms of the ERISA

Plans; and

- (j) cease and desist from employing policies and procedures designed to deny or to unduly obstruct, hamper, and delay PLAINTIFFS' right to appeal the benefit determinations as to its submitted claims.

SECOND CLAIM FOR RELIEF

Enforcement Under 29 U.S.C. § 1132(a)(2) For Breach of Fiduciary Duty (Against All Defendants)

387. The allegations of the prior paragraphs of this Complaint are hereby repeated as if fully set forth herein.

388. This cause of action is alleged by PLAINTIFFS on behalf of all ERISA plan members who received out-of-network services from PLAINTIFFS, and on behalf of the ERISA plans themselves. This is a claim pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), which authorizes ERISA beneficiaries to bring a suit for appropriate relief under 29 U.S.C. § 1109. Section 29 U.S.C. § 1109 provides:

Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

389. PLAINTIFFS have standing to pursue this claim as assignee of the members' benefits under the ERISA plans. As the assignee of benefits under the ERISA Plans, PLAINTIFFS step into the shoes of the "beneficiary" and are also the "claimants" for purposes of the ERISA statute and regulations.

390. Aetna and each of the ERISA Plan Defendants served as a fiduciary for the ERISA plans at issue. As fiduciaries, Aetna and the ERISA Plan Defendants

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owed the ERISA Plans and the plan members and beneficiaries duties to act with undivided loyalty and prudence in the administration of the plans.

391. Defendants willfully and systematically breached their fiduciary duties of loyalty and prudence by failing to provide benefits and make payments in accordance with the ERISA Plan language and requirements. Defendants willfully and systematically breached their fiduciary duties by failing to provide a meaningful appeal process and comply with the ERISA regulations in administering claims and appeals.

392. The ERISA Plan Defendants breached their fiduciary duties by continuing to delegate their duties to administer the plans to Aetna even when it became apparent that Aetna was not qualified to do so, and in fact had failed to correctly apply the ERISA Plan language and manage the respective ERISA Plans for the benefit of plan participants and beneficiaries. PLAINTIFFS are informed and believe that the ERISA Plan Defendants engaged in little or no oversight of Aetna to ensure that Aetna's actions complied with the ERISA Plan language and the requirements of the ERISA statute and regulations.

393. Aetna breached its fiduciary duties by failing to comply with the ERISA Plans and ERISA regulations in pricing and paying PLAINTIFFS' claims or in handling PLAINTIFFS' appeals. Aetna further breached its fiduciary duties by delegating its duties as the Plan Administrator and/or Claims Administrator for each plan to an unqualified third party, Global Claims Services. Global Claims Services was not qualified to interpret the ERISA Plan documents or price PLAINTIFFS' claims pursuant to those plans, and Aetna's reason for delegating such claims to Global Claims Services was for the purpose of underpaying PLAINTIFFS' claims and to avoid complying with Aetna's fiduciary duties towards plan participants and beneficiaries.

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394. Pursuant to 29 U.S.C. §1105, named fiduciaries such as the ERISA Plan Defendants are liable for the fiduciary breaches of Aetna because the ERISA Plan Defendants continued to improperly delegate their duties to Aetna.

395. Also pursuant to 29 U.S.C. §1105, the ERISA Plan Defendants are liable for the breach of their co-fiduciaries, Aetna, because they were aware, or should have been aware, of the breaches being committed by Aetna, yet made no reasonable efforts under the circumstances to remedy the breaches, and in some instances, participated knowingly in, or knowingly undertook to conceal, the improper acts or omissions of Aetna, knowing those acts or omissions were breaches of fiduciary duty.

396. In light of all Defendants' systematic and willful violations of their fiduciary duties to plan beneficiaries and participants, PLAINTIFFS, as assignee of the members' benefits, on behalf of the members of the ERISA Plans, and on behalf of the ERISA Plans themselves, seek an injunction to remove Aetna from acting as the Plan Administrator and/or Claims Administrator for each of the ERISA plans at issue; or, in the alternative, to compel the ERISA Plan Defendants and Aetna to honor the terms of the plans, and to cease committing willful and systematic breaches of their fiduciary duties.

THIRD CLAIM FOR RELIEF

(By Plaintiffs against all Defendants for Production of Documents Under 29 U.S.C. §§ 1024(b), 1104, and 1133(2), and for Statutory Penalties Under 29 U.S.C. § 1132(c)(1))

397. The allegations of the prior paragraphs of this Complaint are hereby repeated as if fully set forth herein.

398. 29 U.S.C. § 1024(b) requires Defendants to produce the "summery plan description . . . or other instruments under which the plan is established or operated."

1 399. 29 C.F.R. § 2560-503-1(h) provides requires Defendants to produce
 2 "upon request and free of charge, reasonable access to, and copies of, all documents,
 3 records, and other information relevant to the claimant's claim for benefits."

4 400. As set forth above, in appealing the claims at issue in this case,
 5 PLAINTIFFS explicitly requested that Defendants produce all the documents they
 6 are required to produce under the ERISA statute and regulations. In particular,
 7 PLAINTIFFS requested copies of the ERISA Plans, all documents Defendants used
 8 to calculate UCR, and copies of contracts between Aetna and the ERISA Plan
 9 Defendants.

10 401. Defendants failed to provide the requested documents to
 11 PLAINTIFFS. For example:

12 a. In most instances, Defendants failed to provide a copy of the
 13 SPD or ERISA Plan.

14 b. In every instance, Defendants failed to provide copies of
 15 procedures, formulas, methodologies, or schedules applied by Aetna or Global
 16 Claims Services in determining UCR amounts.

17 c. In every instance, Defendants failed to provide copies of
 18 contracts between Aetna and the ERISA Plan Defendants.

19 402. Section 502(c)(1) of ERISA imposes a fine of up to \$110 per day upon
 20 a plan administrator who "fails or refuses to comply with a request for any
 21 information which such administrator is required by this subchapter to furnish to a
 22 participant or beneficiary." 29 U.S.C. §§ 1132(c)(1); see also id. § 1133, 29 C.F.R.
 23 §§ 2650.503-1, 2575.512c-3.

24 403. Accordingly, PLAINTIFFS request that Defendants produce the
 25 requested documents and the Court impose a fine of up to \$110 per day for each day
 26 Defendants have failed to provide the requested documents.

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FOURTH CLAIM FOR RELIEF

**Declaratory and Injunctive Relief Under 29 U.S.C. § 1132(a)
(Against All Defendants)**

404. The allegations of the prior paragraphs of this Complaint are hereby repeated as if fully set forth herein.

405. ERISA's civil enforcement provision provides:

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or **to clarify his rights to future benefits under the terms of the plan;**

(3) by a participant, beneficiary, or fiduciary

(A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or

(B) to obtain other appropriate equitable relief

(i) to redress such violations or

(ii) to enforce any provisions of this subchapter or the terms of the plan;

29 USC § 1132(a) (emphasis added).

406. ERISA requires a denial of benefits to be accompanied by "adequate notice in writing" including "the specific reasons for such denial." 29 U.S.C. § 1133(1).

407. In addition, employee benefit plans must provide participants and beneficiaries with "full and fair review by the appropriate named fiduciary of the decision denying the claim." 29 U.S.C. § 1133(2).

408. The ERISA regulations require plans to "maintain reasonable procedures governing ... notification of benefit determinations, and appeals of adverse benefit determinations." 29 C.F.R. § 2560.503-1(b).

409. When a plan makes an adverse benefit determination, the ERISA regulations require the plan administrator to provide written or electronic notification "in a manner calculated to be understood by the claimant" and to include the following information:

(i) The specific reason or reasons for the adverse determination;

(ii) Reference to the specific plan provisions on which the determination is based;

(iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;

(iv) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review;

(v) In the case of an adverse benefit determination by a group health plan or a plan providing disability benefits,

(A) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request; or

(B) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

(vi) In the case of an adverse benefit determination by a group health plan concerning a claim involving urgent care, a description of the expedited review process applicable to such claims.

29 C.F.R. § 2560.503-1(g).

410. The ERISA regulations also require "at least 60 days" after notification "within which to appeal the determination." 29 C.F.R. § 2560.503-1(h).

411. The ERISA Plan Defendants and Aetna have violated the ERISA statute and regulations in that they have made adverse benefit determinations

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without complying with these standards. The ERISA Plan Defendants and Aetna have made adverse benefit determinations – in the form of denying claims for benefits, partially paying claims for benefits, and seeking to recoup past payments from PLAINTIFFS – (a) without providing "adequate notice in writing" including "the specific reasons for such denial," 29 U.S.C. § 1133(1), (b) without providing "(i) [t]he specific reason or reasons for the adverse determination, (ii) [r]eference to the specific plan provisions on which the determination is based, (iii) [a] description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary," or any of the other requirements of 29 C.F.R. § 2560.503-1(g), and (c) without providing PLAINTIFFS "at least 60 days" after notification "within which to appeal the determination." 29 C.F.R. § 2560.503-1(h).

412. PLAINTIFFS seek a declaration by the Court clarifying their rights under ERISA and the ERISA regulations, and that Defendants have violated the ERISA statutes and regulations in issuing adverse benefit determinations to PLAINTIFFS' claims.

413. PLAINTIFFS seek an injunction by the Court enjoining Defendants from violating the ERISA statutes and regulations in issuing adverse benefit determinations to PLAINTIFFS' claims.

FIFTH CLAIM FOR RELIEF

(By All Plaintiffs for Unfair Business Practices in Violation of California Business & Professions Code §§ 17200 *et seq.*)

414. The allegations of the prior paragraphs of this Complaint are hereby repeated as if fully set forth herein.

415. PLAINTIFFS assert this cause of action in their own independent right, and not based upon the Assignment of Benefits Plaintiffs received from their patients.

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1 416. Aetna has engaged in unfair, unlawful and/or fraudulent business acts
 2 and practices against Plaintiffs by, *inter alia*:

- 3 a. using arbitrary, capricious and improper methods to improperly
 4 underpay Plaintiffs' claims;
- 5 b. receiving kickbacks and/or commissions for underpaying
 6 PLAINTIFFS' claims in violation of California Health & Safety Code
 7 § 1399.56 and/or Insurance Code § 796.02, which provide that claims
 8 reviewers may not be compensated on the basis of (a) a percentage of
 9 the amount by which a claim is reduced for payment; or (b) the number
 10 of claims or the cost of services that were denied and not paid; and
- 11 c. engaging in unfair payment patterns;
- 12 d. misrepresenting to PLAINTIFFS the actual methods used to calculate
 13 payment of the claims; and
- 14 e. selling PPO insurance to its members but usual unfair and illegal
 15 actions and tactics designed to prevent its members from obtaining care
 16 at out-of-network providers and benefitting from their PPO insurance.

17 417. This conduct by Defendants constitutes illegal and unfair business
 18 practices under California Business and Professions Code § 17200, *et seq.* As a
 19 result of their acts of unfair competition, Defendants have and continue to receive
 20 and retain monies that rightfully belong to PLAINTIFFS as compensation for
 21 rendering covered, medically necessary services to the plan members.

22 418. PLAINTIFFS have thus suffered injury in fact because they have been
 23 denied the payment to which they are legally entitled for the medically necessary
 24 services provided to Defendants' members.

25 419. Defendants' unfair competition is likely to continue absent judicial
 26 intervention. This conduct threatens not only PLAINTIFFS' economic well being
 27 and future viability, but also the health of the public and the needs of California
 28 residents who have Aetna PPO policies.

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420. California Business and Professions Code § 17203 provides that any court of competent jurisdiction may enjoin any person from engaging in unfair competition and restore to any person who is a victim of that unfair competition any money acquired thereby. PLAINTIFFS seek restitution of an amount to be proved at trial, plus applicable statutory interest, which is the amount that the Defendants are obligated to pay PLAINTIFFS for the services it provided to plan members. PLAINTIFFS further seek an injunction prohibiting the Defendants' ongoing conduct in using the inappropriate methodologies to deny or underpay PLAINTIFFS' claims for medical treatment provided to plan members. Furthermore, the injunction should force the Defendants to correctly price past and future claims by PLAINTIFFS by determining UCR based on appropriate UCR data and methodologies, and to prevent Aetna from taking any actions designed to dissuade their members from using the out-of-network benefits in their PPO policies.

421. PLAINTIFFS' legal remedies are inadequate in that the Defendants' unfair, unlawful and fraudulent conduct is ongoing and repeated litigation to correct its ongoing actions is inefficient for the parties and the Court. PLAINTIFFS' damages cannot be compensated in terms of money and are difficult or impossible to ascertain in terms of monetary damages. Defendants' conduct alleged in this Complaint are continuing and will continue unless restrained by this Court.

WHEREFORE, PLAINTIFFS prays for and demands judgment against the Defendants as set forth above and as follows:

1. For a declaration that PLAINTIFFS are entitled to have Aetna and the ERISA Plans calculate UCR based on the ERISA and Aetna Plan documents:
2. For damages in the amount of \$26,873,616.82.
3. For interest at the applicable legal rate.

1 4. For attorneys' fees.

2 5. For such other relief as the Court deems just and proper

3
4 DATED: November 21, 2013

HOOPER, LUNDY & BOOKMAN, P.C.

5
6
7 By:



DARON L. TOOCH

8 Attorneys for Plaintiffs BAY AREA
9 SURGICAL GROUP, INC.; KNOWLES
10 SURGERY CENTER, LLC, NATIONAL
11 AMBULATORY SURGERY CENTER, LLC,
12 LOS ALTOS SURGERY CENTER, LP,
13 FOREST AMBULATORY SURGERY
14 CENTER, LP, and SOAR SURGERY
15 CENTER, LLC
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